



0000203873

**BEFORE THE ARIZONA CORPORATION COMMISSION**

LEA MÁRQUEZ PETERSON

Chairwoman

Arizona Corporation Commission

SANDRA D. KENNEDY

Commissioner

**DOCKETED**

JUSTIN OLSON

Commissioner

JUN - 9 2021

ANNA TOVAR

Commissioner

**DOCKETED BY**

JIM O'CONNOR

Commissioner

IN THE MATTER OF THE COMMISSION'S  
INVESTIGATION AND PROMULGATION  
OF A CODE OF ETHICS.

DOCKET NO. AU-00000E-17-0079

DECISION NO. 78040

**ARIZONA CORPORATION  
COMMISSION CODE OF ETHICS AS  
AMENDED**

**BY THE COMMISSION:****PREAMBLE**

The Arizona Corporation Commission ("Commission") is dedicated to ensuring the public trust. As members of a public body, the Commissioners should respect and comply with the law and should conduct themselves at all times in a manner that promotes public confidence in the integrity and impartiality of the Commission. This code of ethics is intended to recognize and establish the moral duties and obligations of Commissioners that involve not only obeying the law, but also performing their duties with the highest standards of ethical and professional conduct.

*Source:*<sup>1</sup> NARUC Code of Ethics, Canon I; Ariz. Code of Judicial Conduct, Canon I, Rule 1.2

**I. GENERAL ETHICAL DUTIES**

**Rule 1.1** Commissioners shall discharge their duties in full compliance with applicable laws concerning ethical conduct.

<sup>1</sup> A full text copy, or link to a full text copy, of the sources cited herein may be found in the attached "Code of Ethics Appendix."

1       *Source:*    1992 Ariz. Sess. Laws, ch. 134 § 1; NARUC Code of Ethics, Canon I; Ariz. Code of  
2                   Judicial Conduct, Canon I, Rule 1.1

3  
4       **Rule 1.2**       The Commission shall have a Code of Conduct which is attached, as Attachment A,  
5       and incorporated into this Code of Ethics.

6  
7                   **II. PROPER PERFORMANCE OF COMMISSIONER DUTIES**

8       **Rule 2.1**       The official duties of Commissioners take precedence over all other activities.

9       *Source:*    NARUC Code of Ethics, Canon III; Ariz. Code of Judicial Conduct, Canon II,  
10       Rule 2.1

11  
12       **Rule 2.2**       Commissioners should be faithful to and constantly strive to improve their  
13       competence in regulatory principles.

14       *Source:*    NARUC Code of Ethics, Canon III; Ariz. Code of Judicial Conduct, Canon II, Rule  
15       2.5

16  
17       **Rule 2.3**       Commissioners should maintain order and decorum with each other and in the  
18       meetings and proceedings before them. Commissioners should be patient, dignified, and courteous  
19       to litigants, witnesses, lawyers, and others with whom the Commission deals in an official capacity,  
20       including fellow Commissioners, and should require similar conduct of their fellow Commissioners,  
21       lawyers, staff, and others subject to the Commissioners' direction and control. Commissioners  
22       should afford to every person who is legally interested in a proceeding, or his or her lawyer, the full  
23       right to be heard according to law.

24       *Source:*    NARUC Code of Ethics, Canon III; Ariz. Code of Judicial Conduct, Canon II, Rule  
25       2.8

26       **Rule 2.4**       Commissioners should not perform an act in a private capacity that may be construed  
27       as an official act.

28       *Source:*    A.A.C. R2-5A-501



**Rule 2.5** Commissioners shall not with corrupt, malicious, unscrupulous, unethical, or intimidating intent use their political influence or position to cause the firing, promotion, or demotion of any Commission employee or the hiring or failure to hire any applicant for employment with the Commission.

*Source:* A.R.S. §§ 1-215, 13-1202, 41-753; *Black's Law Dictionary* (10th ed. 2014)

*Comment:* The following definitions shall apply: Corrupt means a wrongful design to acquire or cause some pecuniary or other advantage to the person guilty of the act, or to some other person. Malicious means a wish to vex, annoy, or injure another person, or an intent to do a wrongful act. Unscrupulous means behaving in a way that is dishonest or unfair in order to gain advantage. Unethical means lacking moral norms or standards of professional conduct. Intimidating means using words or conduct to threaten (1) physical injury to another person, or (2) serious damage to the property of another person, or (3) serious public inconvenience.

### **III. PROHIBITION ON HARASSMENT**

**Rule 3.1** The Commission is committed to maintaining human dignity and protecting its employees and fellow Commissioners from harassment, whether it is of a sexual nature or based on race, color, national origin, religion, age, disability, genetic information, gender, pregnancy, military or veteran status, political affiliation or any other status protected by law. Commissioners are prohibited from engaging in harassment in any form, whether verbal, physical or visual.

*Source:* 42 U.S.C. § 2000e, *et seq.*; 29 U.S.C. § 621, *et seq.*; 42 U.S.C. § 12101, *et seq.*; Ariz. Code of Judicial Conduct, Canon II, Rule 2.3

**Rule 3.2** To preserve the order, decorum, and dignity of the Commission, the office of Commissioner, and the Commission's public meetings and proceedings, all Commission discussions, questions, and comments made during public meetings and proceedings shall reflect an objective and impersonal interchange between everyone involved, including Commissioners, Commission employees, litigants, witness, stakeholders, members of the public, and all others with whom the Commission deals in an official capacity. No Commissioner, Commission employee,

litigant, witness, stakeholder or member of the public shall during any public meeting or proceeding before the Commission use any hateful, vicious, offensive, or personal speech or language that is intended to attack, offend, harass, impugn, arraign, charge, indict, misrepresent, or insult another Commissioner, Commission employee, litigant, witness, stakeholder, member of the public, or other person or entity with whom the Commission deals in an official capacity. No Commissioner during any public meeting or proceeding before the Commission shall, directly or indirectly, by any form of words, impute or insinuate to another Commissioner any conduct, characteristic, condition, or motive unworthy or unbecoming of a Commissioner or incompatible with the proper exercise of the Commission's lawful office, including with respect to any question, comment, proposal, or vote made or offered by another Commissioner. No Commissioner shall interrupt another Commissioner in discussions, questions, or comments without the Commissioner's consent, and to obtain such consent, the Commissioner shall first address the Chairman.

#### IV. AVOIDING CONFLICTS OF INTEREST

**Rule 4.1** Commissioners or their relatives who have a substantial interest in any contract, sale, purchase, or service to the Commission shall disclose that interest in the public records of the Commission, and shall refrain from voting on or participating in matters in such contract, sale, or purchase. Commissioners shall also disclose any substantial interests in any decision of the Commission and shall refrain from participating in any manner in such decisions.

*Source:* A.R.S. § 38-501, *et seq.*

*Comment:* A Commissioner should disqualify himself or herself in a proceeding where that Commissioner determines that he or she cannot be impartial, such as when the Commissioner has a personal or political bias or prejudice concerning a party or another Commissioner. Commissioners should also not allow family, social, political, employment, or other relationships, including with fellow Commissioners, to influence their official conduct or judgment. A substantial interest exists if all of the following are present: (i) the decision could affect, either positively or negatively, an interest of the Commissioner or his/her relative; (ii) the interest is pecuniary or proprietary, such as

1 a financial interest ownership interest, future employment interest, or political interest; and (iii) the  
2 interest is not "remote" as defined by A.R.S. § 38-502(10).

3  
4 **Rule. 4.2** Commissioners shall not be employed by, hold an official relation to, or own stocks  
5 or bonds in, a corporation that : (i) is regulated by the Commission; (ii) regularly appears before the  
6 Commission or is represented by a lobbyist registered with the Commission pursuant to Rule 5.2  
7 that regularly appears before the Commission on the corporation's behalf; or (iii) has more than a  
8 de minimis interest in the outcome of a Commission decision, such as, for a contested matter, a party  
9 to the contested matter while the contested matter is pending, or for a generic docket or rulemaking  
10 proceeding, a corporation or corporation represented by a lobbyist registered with the Commission  
11 pursuant to Rule 5.2 whose interests could be affected by the docket or proceeding and whose intent  
12 is to influence any decision, legislation, policy or rulemaking that could result from the generic  
13 docket or rulemaking proceeding while the generic docket or rulemaking proceeding is open or  
14 pending. In the event an immediate family member (mother, father, sister, brother, spouse, child,  
15 and members of household) is found to violate this Rule, it may require disclosure.

16 *Source:* A.R.S. § 40-101; NARUC Code of Ethics, Canon II

17 *Comment:* It is permissible for a Commissioner to be indirectly invested in the stock of a  
18 regulated entity or entity that regularly appears before the Commission or has more than a de minimis  
19 interest in the outcome of a Commission decision, provided such investment is through entities not  
20 regulated by the Commission. For example, it is permissible for a Commissioner to be invested in a  
21 brokerage account that permits the broker to invest the client's funds in various entities.

22  
23 **Rule. 4.3** Commissioners shall not receive, or agree to receive, compensation other than as  
24 provided by law, for any service rendered or to be rendered by the Commissioner, related to matters  
25 pending before the Commission.

26 *Source:* A.R.S. § 38-505

27 *Comment:* Commissioners shall not solicit or accept meals or other things of value from a public  
28 service corporation regulated by the Commission or a party to a Commission proceeding or person

1 or entity in a generic docket or rulemaking proceeding that is registered as a lobbyist pursuant to  
2 Rule 5.2 or represented by a lobbyist that is registered at the Commission under Rule 5.2. A narrow  
3 exception to this rule is permitted for meals or other things of value that are provided to all attendees  
4 as part of a larger educational event that a Commissioner attends in his or her official capacity e.g.  
5 the National Association of Regulatory Utility Commissioners (NARUC) conferences.

6  
7 **Rule 4.4** Commissioners shall not use their official position to secure any valuable thing or  
8 valuable benefit, including the promise or possibility of future political support, future employment  
9 opportunities, or other future personal gain that would not ordinarily be provided to the  
10 Commissioner in the performance of the Commissioner's official duties, if the thing or benefit is of  
11 such a character as to manifest a substantial and improper influence on the Commissioner.

12 *Source:* A.R.S. § 38-504

13 *Comment:* Commissioners should self-regulate their outside activities to minimize the risk of  
14 conflict. But, the receipt of a benefit by a Commissioner does not, standing alone, establish a  
15 substantial and improper influence. For example, a Commissioner's attendance and participation in  
16 trade industry events related to matters within the Commission's jurisdiction often serve the public  
17 interest.

18 It is appropriate for Commissioners to attend luncheon meetings, dinner meetings, or  
19 industry-related gatherings and conferences sponsored by industrial, technical, and professional  
20 associations, when attendance and participation serves the public interest and involves a discussion  
21 of matters of mutual interest to the Commission and in furtherance of the Commissioner's duties.  
22 Likewise, it is appropriate for Commissioners to accept travel-related reimbursement for events  
23 related to Commission business when (i) attending educational or informational settings; (ii)  
24 attending events or meetings in which the Commissioner is scheduled to meaningfully participate;  
25 or (iii) the events relate to the Commissioner's official duties. No benefit or travel-related expense  
26 may be accepted if it is offered in exchange for official action.

27 **Rule 4.5** A Commissioner shall not represent another person or entity before the Commission  
28 for a period of one year following the date the Commissioner's tenure as a member of the

Commission ends. A sitting Commissioner shall not meet with any former Commissioner who is employed by, retained by, or contracted by a public service corporation to discuss issues pending before the Commission for a period of one year after the former Commissioner leaves office.

*Source:* A.R.S. § 38-504

## V. DISCLOSURE

**Rule 5.1** Commissioners must file with the Arizona Secretary of State a verified financial disclosure statement each year. The matters disclosed include sources of personal compensation, the identity of personal creditors and debtors, and ownership interests in investments, businesses, and real property. A candidate for nomination, election, or retention to the Commission must file with the Arizona Secretary of State, a statement of organization within ten days of qualifying as a candidate committee. The information disclosed include the names, occupations, and employers of the committee's chairperson and treasurer.

*Source:* A.R.S. §§ 16-901; 16-906; 18-444; 38-541; 38-543, 38-545

*Comment:* Commissioners shall make their verified annual financial disclosure statements available to the public on the Commission website. Commissioners who have been named as chairperson or treasurer in a statement of organization filed by a candidate committee for nomination, election, or retention to the Commission shall make the statement of organization available to the public on the Commission website.

**Rule 5.2** A Commissioner shall not knowingly communicate with any person, representing an industry or public service corporation whose interests will be affected by Commission decisions, and whose intent is to influence any decision, legislation, policy, or rulemaking within the Commission's jurisdiction, unless that person has registered as a lobbyist with the Commission prior to making or attempting to make such communication. This registration requirement shall not apply to individuals representing themselves, subject matter experts or other persons who answer technical questions or who provide technical information at the request of a Commission lobbyist, or licensed



1 attorneys whose primary purpose in communicating with a Commissioner is to advocate on behalf  
2 of a party in the course of Commission proceedings.

3 *Source:* A.R.S. § 41-1231, *et seq.*

4 *Comment:* Lobbyist registration is administered by the Commission and is separate from other  
5 statutory lobbyist registration requirements. The Commission shall make lobbyist registration  
6 information available on its website. The information provided shall be consistent with the lobbyist  
7 registration form prescribed by the Arizona Secretary of State, which includes the lobbyist's current  
8 and former list of clients. Commissioners are encouraged to access information regarding licensed  
9 attorneys who have made an appearance on behalf of a party in the course of a Commission  
10 proceeding through the Commission's e-docket system.

11  
12 **Rule 5.3** Commissioners shall disclose on a quarterly basis any gifts or things of value received  
13 directly from any person or entity affiliated with a public service corporation regulated by the  
14 Commission. "Gifts or things of value" under this code shall be limited to those things or services  
15 with a cash value of more than \$20.

16 *Source:* A.A.C. R2-5A-501; Ariz. Code of Judicial Conduct, Canon III, Rule 3.13

17 *Comment:* Commissioners should not accept any gifts or things of value from anyone when the  
18 purpose is, or appears to be, designed to influence official action. Commissioners should likewise  
19 not permit themselves to be placed under any kind of personal obligation that could lead a person to  
20 expect official favors. Commissioners shall make these quarterly disclosures available to the public  
21 on the Commission website.

22  
23 **Rule 5.4** When serving as a Commissioner, if a Commissioner is an employee or independent  
24 contractor outside of the Commission, then the Commissioner shall disclose the following specifics  
25 of such employment to the Commission's Ethics Officer established under Rule 8.1. The following  
26 details of employment shall be disclosed, if not subject to confidentiality or non-disclosure  
27 agreement amounting to breach of contract: (a) Name of employer; (b) Title or position and (c)  
28 Compensation. If the Commissioner is an independent contractor, the Commission shall the list the

1 following, if not subject to confidentiality or non-disclosure agreement amounting to breach of  
2 contract: (a) Name of clients and client lists must be kept up to date on a monthly basis; (b) Nature  
3 of the independent contract with the client; and (c) contract amount.

## 4 5 **VI. CAMPAIGN CONTRIBUTIONS**

6 **Rule 6.1** Commissioners receiving campaign contributions shall conduct all necessary due  
7 diligence to properly and accurately document those contributions, to fully comply with campaign  
8 finance reporting laws.

9 *Source:* A.R.S. §§ 16-926; 18-444; 38-541; 38-543–38-545; *Citizens United v. Federal*  
10 *Election Commission*, 558 U.S. 310 (2010)

11 *Comment:* Commissioners who are running for re-election should remain actively involved in  
12 financially managing their own campaigns so that contributions can be properly recorded.  
13 Commissioners shall make these disclosures available to the public on the Commission website. To  
14 avoid any appearance of impropriety or conflict of interest in the Commissioner's official conduct,  
15 Commissioners should be particularly mindful of any campaign contributions received from  
16 regulated entities, or campaign contributions received from individuals or entities affiliated with  
17 regulated entities.

18 Commissioners are not expected to know or disclose the funding source of any independent  
19 expenditures, unless these funding sources are confirmed by the donors; however, Commissioners  
20 must continue to disclose any and all campaign contributions as required by Arizona law.  
21 Commissioners should educate themselves on the financial disclosure handbook and be familiar with  
22 the law, including any amendments or changes to the law regarding disclosure.

23  
24 **Rule 6.2 (A)** A Commissioner shall not accept contributions from any regulated public service  
25 corporation nor from a person or entity in a generic docket or rulemaking proceeding that is  
26 registered as a lobbyist pursuant to Rule 5.2 or represented by a lobbyist that is registered with the  
27 Commission pursuant to Rule 5.2. A Commissioner shall not accept contributions from an intervenor  
28 to a pending case that is set before the Commission. Except for a Citizens Clean Elections Act



1 candidate, in the event that a Commissioner unknowingly receives such a campaign contribution,  
2 the Commissioner shall refund the contribution. Except for a Citizens Clean Elections Act candidate,  
3 if the contribution is not or cannot be returned, the Commissioner shall recuse him or herself from  
4 participating or voting on any matter involving the public service corporation or party.

5 In the event that a Commissioner was or is a Citizens Clean Elections Act candidate and  
6 unknowingly received a prohibited contribution and cannot return the contribution, the  
7 Commissioner shall not be required to recuse him or herself. In such event, if the prohibited  
8 contribution becomes known prior to voting on a matter before the Commission, the Commissioner  
9 shall instead declare the contribution which benefited the Commissioner. The declaration shall be  
10 made in writing as soon as possible after the Commissioner knows that the public service corporation  
11 or party will be on an Open Meeting agenda, but no less than two business days before a vote on the  
12 matter. The declaration shall identify the donor, state the dollar amount of the contribution and whom  
13 it benefited. The declaration shall state whether the contribution was returned to the donor. The  
14 declaration shall also contain the following language:

15  
16 “Any party to this matter who believes that I should recuse myself may file the reasons for recusal  
17 in this docket. I may or may not recuse myself from this matter.”

18 The same declaration shall also be made orally by the Commissioner immediately following  
19 the Commission Chair announcing the matter for discussion at the Open Meeting. Any party to the  
20 case shall be given opportunity to state, at the Open Meeting, why the Commissioner should not be  
21 voting on the matter.

22 Source: A.R.S. § 16-905, A.R.S. §16-913, A.A.C. 14-3-103.

23 *Comment:* For the purposes of this Rule, a “contribution” means any money, advance, deposit  
24 or other thing of value that is made to a Commissioner’s candidate committee or any Qualifying  
25 Contribution or Early Contribution made to a Citizens Clean Elections Act candidate for the purpose  
26 of influencing an election but does not include contributions that have been returned to the donor.  
27 This provision does not apply to contributions transferred from a prior candidate committee under  
28 A.R.S. § 16-913. When the public service corporation or party is an entity, the prohibition extends

1 to the entity, owner, officer, director, employee, or any political action committee registered by the  
2 entity. The contributor's status is set at the time of making a contribution. This provision applies to  
3 all contributions received: (a) within eighteen months of a Commissioner's election/appointment to  
4 the Commission or (b) while the Commissioner is in office. The doctrine of necessity will apply if  
5 the Commission would fail to establish a quorum on account of this provision.

6  
7 **Rule 6.2 (B)** Prior to voting on a matter before the Commission, or at the beginning of an Open  
8 Meeting wherein votes will be taken on a matter, a Commissioner, regardless of whether the  
9 Commissioner is a candidate for nomination, election or retention to the Commission, shall declare  
10 any known campaign contributions or contributions of any kind which indirectly benefit that  
11 Commissioner (e.g. independent expenditure), or directly or indirectly benefit that Commissioner's  
12 immediate family (mother, father, sister, brother, spouse, children, and members of household),  
13 and/or that Commissioner's personal or business interest/cause e.g., (i) charity, nonprofit or social  
14 welfare organization the Commissioner publicly supports, is employed by, or serves in an official  
15 capacity for; (ii) corporation, business, client, or employer the Commissioner owns, has a pecuniary  
16 interest in, represents or is employed by; (iii) candidate for nomination, election, or retention to the  
17 Commission the Commissioner publicly supports or has endorsed; or (iv) candidate committee or  
18 political action committee in which the Commissioner is named as chairperson or treasurer on the  
19 committee's statement or organization, etc., where the contribution is from:

- 20  
21 1. A business entity, that is a party in the matter (or a related entity) before the  
22 Commission or, if the matter is a generic docket or rulemaking proceeding, is  
23 represented by a lobbyist registered with the Commission pursuant to Rule 5.2 that  
24 has communicated regarding the docket or proceeding, where the owners, and/or  
25 officers, and/or employees who are in executive positions, have indirectly (e.g.,  
26 through independent expenditure, or other third-party independent expenditure, etc.)  
27 contributed, in aggregate, one thousand dollars (\$1,000) or more.

1       2. An individual that is a party in the matter before the Commission or, if the matter is  
2       a generic docket or rulemaking proceeding, is registered as a lobbyist with the  
3       Commission pursuant to Rule 5.2 and has communicated regarding the matter, where  
4       the individual and/or members of that individual's immediate family have  
5       contributed indirectly (e.g., through independent expenditure, or other third-party  
6       independent expenditure), in aggregate, one hundred dollars (\$100) or more.

7       The declaration shall be made in writing as soon as possible after the Commissioner knows  
8       that a matter that meets the above criteria (if a charity or social interest/cause, the name of that  
9       charity or social interest/cause need not be revealed); however, if a candidate committee or political  
10      interest/cause, the name of the candidate committee or political interest/cause must be disclosed)  
11      will be on an Open Meeting agenda, but no less than two business days before a vote on the matter.  
12      The declaration shall identify the donor, state the dollar amount of the contribution and whom it  
13      benefited. The declaration shall state whether or not the contribution was returned to the donor. The  
14      declaration shall also contain the following language:

15  
16            "Any party to this who believes that I should recuse myself may file the reasons for  
17            recusal in this docket. I may or may not recuse myself from this matter."

18      The same declaration shall also be made orally by the Commissioner immediately following  
19      the Commission Chairman announcing the matter for discussion at the Open Meeting or, at the  
20      Chairman's discretion, at the beginning of the Open Meeting upon the Chairman's instruction. If the  
21      Chairman allows declarations to be made at the beginning of an Open Meeting, a Commissioner  
22      who must make a declaration pursuant to the Rule need only make one declaration per all relevant  
23      matters to which the declaration pertains. Any party to the case shall be given the opportunity to  
24      state, at the Open Meeting, why the Commissioner should not be voting on the matter.

The contributions contemplated above shall include all contributions received:

1. Within eighteen (18) months of a Commissioner's election/appointment to the Commission, even if the contribution is returned to the donor.

2. While a Commissioner is in office, even if the contribution is returned to the donor.

*Source:* A.R.S. §§ 16-192, 16-901, 16-905, 16-911, 16-913, 16-916, 16-918, 16-922, 16-926; A.A.C. R14-3-103; Ariz. Code of Judicial Conduct, Canon IV; *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010)

## **VII. PUBLIC ACCESS TO INFORMATION**

**Rule 7.1** Meetings involving a quorum of Commissioners, where legal action is discussed, deliberated, proposed, or taken, shall be conducted in public and in accordance with Arizona Open Meeting Law. The Arizona Open Meeting Law requires public notice of meetings, prohibits certain discussions between public officers outside of those meetings, and limits discussion at public meetings regarding official action to items related to the agenda.

*Source:* A.R.S. § 38-431, *et seq.*

*Comment:* Calls to the public are governed by different rules and allow the public to address the Commission on any topics of concern within the Commission's jurisdiction, even if the topic is not specifically on the agenda. During open calls to the public, a Commissioner may not dialogue with the presenter if the topic is not on the agenda, however, the Commissioner may (i) respond to criticism; (ii) ask staff to review an item; or (iii) ask that an item be placed on a future agenda. In addition, a Commissioner who proposes that the Commission have the opportunity to consider an off-agenda subject at a future public meeting, without more, does not violate the Arizona Open Meeting Law because it does not propose legal action.

**Rule 7.2** The Commission shall designate from among existing employees a Public Records Officer. The Public Records Officer shall be responsible for complying with public records requests as required by Arizona law.

1       *Source:*   A.R.S. §§ 39-121–39-161

2       *Comment:* Electronic messages sent or received by government-issued electronic devices that  
3 have a substantial nexus to Commission activities are public records and subject to public inspection.  
4 Commissioners likewise have a duty to reasonably account for official activity, even when that  
5 activity is conducted on private devices or through private e-mail accounts. Commissioners cannot  
6 use private devices and accounts for the purpose of concealing official conduct.

7       To ensure transparency and promote accountability to the public, Commissioners shall make  
8 their official calendars available to the public on the Commission website on at least a quarterly  
9 basis. Commissioners shall, at a minimum, disclose in accordance with the following schedule: Q1  
10 (January, February, and March) will be available on the Commission website beginning May 1; Q2  
11 (April, May, and June) will be available on the Commission website beginning August 1; Q3 (July,  
12 August, and September) will be available on the Commission website beginning November 1; and,  
13 Q4 (October, November, and December) will be available on the Commission website beginning  
14 February 1.

15  
16       **Rule 7.3**       Ex parte rules prohibit communications to or from a Commissioner, not on the public  
17 record, concerning the substantive merits of a contested proceeding. The ex parte rules commence  
18 when a matter is set for a public hearing and terminate once an application for rehearing has been  
19 denied. Commissioners shall not initiate or knowingly participate in ex parte communications with  
20 any public service corporations and their lobbyists, or any party to a pending case. Any violation of  
21 this rule requires immediate recusal and participation from the matter by the Commissioner(s) that  
22 violated this rule.

23       *Source:*   A.A.C. R14-3-113

24       *Comment:* The ex parte rule similarly applies to communications to or from agents of the  
25 Commissioner involved in the decision-making process, such as the Commissioner's policy advisors  
26 and interns. The ex parte rule does not prohibit discussions about procedural matters or comments  
27 from the public. For example, Commissioners can communicate or inquire about scheduling issues,  
28 docket filing issues, or other case administration issues, without violating the ex parte rule.



**VIII. ETHICS OFFICER**

**Rule 8.1** The Commission's Ethics Officer shall be the Commission's Chief Counsel (Director of the Commission's Legal Division). If the Commission determines (by a majority vote) or the Chief Counsel determines that the Chief Counsel is unable to perform the duties of Ethics Officer on a particular matter, the Commission's Assistant Chief Counsel shall be the Commission's Ethics Officer for that matter. The Ethics Officer shall provide an annual training to Commissioners to ensure familiarity with the Commission's Code of Ethics, applicable Arizona laws related to the conduct of public officials, public record laws, and open meeting laws. The Ethics Officer shall likewise be available to provide advice to the Commissioners on ethics issues as needed.

*Comment:* Any complaint alleging a violation of any provision of these rules should be submitted in writing and under oath to the Ethics Officer, who shall report such complaint to the Commissioners and the Executive Director. Commissioners are likewise expected to disclose any job-related illegal or unethical behavior on the part of any individual, including the Commissioner him/herself. If a complaint alleging a violation of any provision of Rule 5.4, or any other job-related illegal or unethical behavior, is submitted in writing and under oath to the Ethics Officer, then the Commissioner, against whom the violation is alleged, shall submit in writing and under oath to the Ethics Officer, a statement affirming that no employment or independent contractor relationship under Rule 5.4 constitutes a job-related illegal or unethical behavior, and the Ethics Officer shall report such statement to the Commissioners and the Executive Director.

**IX. ENFORCEMENT**

**Rule 9.1** The Attorney General shall bring an action against any Commissioner who usurps, intrudes into or unlawfully holds or exercises that Commissioner's public office, when the Attorney General has reason to believe that that the Commissioner's public office is being usurped, intruded into or unlawfully held or exercised.

The Attorney General may also empanel a state grand jury to investigate and return indictments for knowing or corrupt misconduct involving Commissioners. Commissioners may be

1 impeached for high crimes, misdemeanors or malfeasance in office, and/or recalled by the voters.

2 Commissioners are also subject to the federal and state criminal laws.

3 *Source:* Ariz. Const. Art. VIII; A.R.S. §§ 12-2041 *et seq.*; 38-311–38-312; 38-441 *et seq.*;  
4 21-422(B)(1)

5 *Comment:* Violations of Arizona law by any Commissioner should be referred for review to the  
6 Attorney General or the county attorney for the county where the events allegedly took place.

### 8 **X. ADOPTION OF CODE**

9 **Rule 10.1** With the exception of Section V, Rule 5.2, this Code of Ethics shall take effect  
10 immediately upon approval of the Commission and shall be re-adopted at the swearing in of each  
11 new Commissioner. Section V, Rule 5.2 shall take effect ninety (90) days from the effective date of  
12 this Code of Ethics to allow parties time to register with the Commission. The Commissioners shall  
13 review this Code of Ethics periodically to determine if any amendment is required.

#### 15 **BY THE ORDER OF THE ARIZONA CORPORATION COMMISSION**

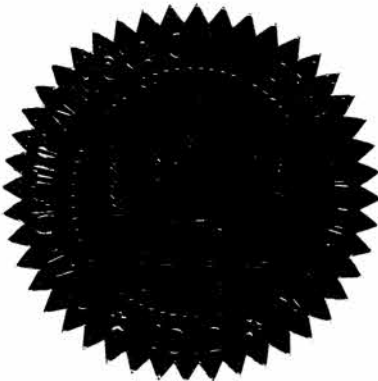
16   
17 CHAIRWOMAN MÁRQUEZ PETERSON

  
COMMISSIONER KENNEDY

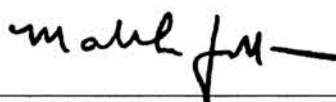
18   
19 COMMISSIONER OLSON

  
COMMISSIONER TOVAR

20   
COMMISSIONER O'CONNOR



22 IN WITNESS WHEREOF, I, MATTHEW J. NEUBERT,  
23 Executive Director of the Arizona Corporation Commission,  
24 have hereunto, set my hand and caused the official seal of this  
25 Commission to be affixed at the Capitol, in the City of  
26 Phoenix, this 09 day of June, 2021.

27   
28 MATTHEW J. NEUBERT  
EXECUTIVE DIRECTOR



# ATTACHMENT A

**ARIZONA CORPORATION COMMISSION CODE OF CONDUCT  
FOR ELECTED AND APPOINTED OFFICIALS**

**PURPOSE**

The Arizona Corporation Commission (“the Commission”) Code of Conduct is an advisory document that informs the roles and responsibilities of both elected and appointed Commissioners. It describes the manner in which Commissioners should treat one another, Commission staff, constituents, and others they contact as a Commissioner. This Code of Conduct more clearly defines the behaviors, manners, and courtesies that are suitable for various occasions. At its core, the Code of Conduct shall make public meetings and the process of governance run more efficiently, respectfully, and smoothly.

**DUTY OF RESPECT**

The constant and consistent theme throughout the Code of Conduct is “respect.” Commissioners experience significant workloads and tremendous stress in making decisions that impact thousands of Arizonans. Despite these pressures, Commissioners must exhibit appropriate behavior at all times. Demonstrating respect for each individual through words and actions is the touchstone that can help Commissioners do the right thing in even the most difficult situations. All Commissioners have equal votes. All Commissioners should be treated with equal respect.

All Commissioners should:

- Fully participate in Commission meetings and other public forums while demonstrating kindness, consideration, and courtesy to others;
- Prepare in advance of Commission meetings and familiarize themselves with issues on the agenda;
- Be respectful of other people’s time by remaining focused and acting efficiently during public meetings;
- Serve as a model of leadership and civility to the community;
- Inspire public confidence in the Commission;
- Exhibit honesty and integrity in every action and statement; and,
- Participate in scheduled activities to increase the Commission’s effectiveness and review Commission procedures, such as this Code of Conduct.

**COMMISSIONER CONDUCT WITH ONE ANOTHER**

The Commission is composed of individuals with a wide variety of backgrounds, personalities, values, opinions, and goals. Despite this diversity, all these individuals have chosen to serve in public office in order to preserve and protect the present and the future of the community. In all cases, this common goal should be acknowledged even as Commissioners may “agree to disagree” on contentious issues.

## **In Public Meetings**

- Practice civility and decorum in discussions and debate.

Difficult questions, challenges presented to a particular point of view, and criticism of ideas and information are legitimate elements of a free democracy in action. This does not allow, however, Commissioners to make belligerent, personal, impertinent, slanderous, threatening, abusive, or disparaging comments. No shouting, or any other physical actions that could be construed as threatening, will be tolerated.

- Honor the role of the Chair in maintaining order.

It is the responsibility of the Chair to keep the comments of Commissioners on track during public meetings. Commissioners should honor efforts by the Chair to focus discussion on current agenda items. If there is disagreement about the agenda or the Chair's actions, those objections should be voiced politely and with reason, following parliamentary procedure.

- Avoid personal comments that could offend other Commissioners

If a Commissioner is personally offended by the remarks of another Commissioner, the offended Commissioner should make notes of the actual words used and call for a "point of personal privilege" that challenges the other Commissioner to justify or apologize for the language used. The Chair will maintain control of this discussion. To that end, all discussion in public meetings must go through the Chair.

- Demonstrate effective problem-solving approaches.

Commissioners have a public stage to show how individuals with disparate points of view can find common ground and seek a compromise that benefits the community as a whole.

## **In Private Encounters**

- Continue respectful behavior in private.

The same level of respect and consideration of differing points of view that is deemed appropriate for public discussions should be maintained in private conversations.

- Be respectful time and resources of other Commissioners and Commission Staff.

If a Commissioner wants to schedule a workshop or special open meeting on a topic related to the work of the Commission, the Commissioner should alert other Commissioners, the Executive Director, and Commission Staff of their intent to schedule an event before announcing the event. If other Commissioners express interest in attending, the Commissioner should make an effort to find a time that works with everyone's schedule.

- Be aware of the lack of security of written notes, voicemail messages, social media posts, and electronic correspondence.

Technology allows words written or said without much forethought to be distributed wide and far. Would you feel comfortable to have this note emailed to others? How would you feel if

this voicemail message were played on a speakerphone in a full office? Written notes, voicemail messages and e-mail should be treated as potentially “public” communication.

### **Other Public Officials**

The foregoing guidelines concerning “Conduct with One Another” shall be followed not only by Commissioners but also by other Public Officials.

### **COMMISSIONER CONDUCT WITH COMMISSION STAFF**

The Commission’s governance relies on the cooperative efforts of two groups: 1) the appointed and elected officials, who set policies, and 2) the Commission Staff, who implement and administer the Commission’s policies. Therefore, every effort should be made to be cooperative and show mutual respect for the contributions made by each individual.

- Treat all Commission Staff members as professionals.

Clear, honest communication that respects the abilities, experience, and dignity of each individual is expected. Inappropriate behavior towards staff is not acceptable.

- Do not disrupt Commission Staff members from their jobs.

Commissioners should not disrupt Commission Staff members while they are performing their job functions so that the individual Commissioner’s needs are met.

- Never publicly criticize an individual employee.

Commissioners should never express concerns about the performance of a Commission employee in public, to the employee directly, or to the employee’s manager. Misdirected comments could violate the Commission’s personnel rules and limit the Commission’s ability to deal fairly and efficiently with personnel matters. Comments about Staff performance should only be made to the Executive Director through private correspondence or conversation.

- Do not get involved in administrative functions.

Commissioners must not attempt to influence Commission Staff on the awarding of contracts or selection of consultants. Do not attend Commission Staff meetings, unless requested by Staff. Even if the Commissioner does not say anything, the Commissioner’s presence implies support, shows partiality, intimidates Staff, and hampers Staff’s ability to do their job objectively. If a Commissioner wishes to meet with Staff for technical assistance or to discuss issues germane to the Commissioner’s work at the Commission, those requests should be made to the Executive Director or Division Director who will designate appropriate Staff to assist the Commissioner.

- Do not solicit political support from Commission Staff.

Commissioners should not solicit any type of political support (financial contributions, display of posters or lawn signs, name on support list, etc.) from Commission Staff members. To do so could violate the law. Commission Staff members may, as private citizens with

constitutional rights, support political candidates any government entity but all such activities must be done away from the workplace.

## **COMMISSIONER CONDUCT WITH THE PUBLIC**

### **In Public Meetings**

Making the public feel welcome is an important part of the democratic process. Commissioners must not exhibit any signs of partiality, prejudice, or disrespect toward an individual participating in a public forum. Every effort should be made to be fair and impartial in listening to public testimony.

- Be welcoming to speakers and treat them with respect.
- Be fair and equitable in allocating public hearing time to individual speakers.

Unless otherwise provided, each speaker shall be allocated three minutes. If many speakers are anticipated, the Chair may shorten the time limit, or may ask a speaker to limit public testimony to new information and points of view not already covered by previous speakers. No speaker will be turned away unless they exhibit inappropriate behavior. After the close of the public hearing, no more public testimony shall be accepted.

- Be actively listening.

It is disconcerting to speakers to have Commissioners not look at them when they are speaking. It is fine to look down at documents or to make notes but reading for a long period of time or gazing around the room gives the appearance of disinterest. Be aware of facial expressions, especially those that could be interpreted as “smirking,” disbelief, anger, or boredom.

- Ask for clarification, but avoid debate and argument with members of the public.

A Commissioner can ask to be recognized by the Chair in order to seek clarification or more information from a speaker during a presentation. In addition, a Commissioner can ask the Chair for a point of order if the speaker is off topic or exhibiting behavior or language the Commissioner finds disturbing. If a speaker becomes flustered or is exhibiting defensiveness to a Commissioner’s questions, it is the responsibility of the Chair to calm and focus the speaker and to maintain the order and decorum of the meeting. Questions by a Commissioner to members of the public testifying should seek to clarify or expand information. It is never appropriate to belligerently challenge or belittle the speaker.

- No personal attacks of any kind, under any circumstances.

A Commissioner should be aware that their body language, tone of voice, as well as the words they use, can appear to be intimidating or aggressive.

### **In Unofficial Settings**

- Make no promises on behalf of a Commissioner.

A Commissioner will frequently be asked to explain a Commissioner's action, or to give their opinion about an issue as they meet and talk with constituents in the community. In matters subject to ex parte, it is appropriate to give a brief overview of the Commission's policy on ex parte communications and to refer the individual to Commission Staff for further information. It is inappropriate to overtly or implicitly promise Commissioner's action, or to promise that Commission Staff members will do something specific, or otherwise request that Staff perform any act that is illegal, or that has the appearance of illegality.

- Make no personal comments about other Commissioners.

It is acceptable to publicly disagree about an issue, but it is unacceptable to make derogatory comments about other Commissioners, their opinions, or their actions.

- Remember that Commissioners are constantly being observed by the community every day that they serve in office.

Commissioner behavior and statements serve a model for proper decorum at the Commission. Honesty and respect for the dignity of each individual should be reflected in every word and action taken by Commissioners, 24 hours a day, seven days a week. It is a serious and continuous responsibility.

#### **COMMISSIONER CONDUCT WITH OTHER PUBLIC AGENCIES**

- Be clear about representing the Commission or personal interests.

If a Commissioner appears before another governmental agency or organization to give a statement on an issue, the Commissioner must clearly state whether his or her statement reflect personal opinion and the official stance of the Commission. A Commissioner should be clear about any organization they represent.

- Correspondence and press releases should be equally clear about representation.
- Commission letterhead may be used when the Commissioner is representing the Commission and the Commission's official position.

#### **COMMISSIONERS CONDUCT WITH THE MEDIA**

- A Commissioner should never go "off the record."

Commissioners are frequently contacted by the media for background and quotes. Most members of the media represent the highest levels of journalistic integrity and ethics and can be trusted to keep their word. But one bad experience can be catastrophic. Words that are not said cannot be quoted.

- A Commissioner should choose words carefully and cautiously.

Comments taken out of context can cause problems. Be especially cautious about humor, sardonic asides, sarcasm, or word play. It is never appropriate to use personal slurs or swear words when talking with the media.

## **GENERAL PRINCIPLES OF PROPER CONDUCT**

The principles of proper conduct include:

- Keeping promises;
- Being dependable;
- Building a solid reputation;
- Participating and being available;
- Demonstrating patience;
- Showing empathy;
- Holding onto ethical principles under stress;
- Listening attentively;
- Studying thoroughly;
- Keeping integrity intact;
- Overcoming discouragement;
- Going above and beyond, time and time again; and,
- Modeling a professional manner.

Proper conduct does NOT include:

- Showing antagonism or hostility;
- Deliberately lying or misleading;
- Speaking recklessly;
- Spreading rumors;
- Stirring up bad feelings, divisiveness; and,
- Acting in a self-righteous manner.

## **CHECKLIST FOR MONITORING CONDUCT**

- Will my decision/statement/action violate the trust, rights or good will of others?
- What are my interior motives and the spirit behind my actions?
- If I have to justify my conduct in public tomorrow, will I do so with pride or shame?
- How would my conduct be evaluated by people whose integrity and character I respect?
- Even if my conduct is not illegal or unethical, is it done at someone else's painful



expense? Will it destroy their trust in me? Will it harm their reputation?

- Is my conduct fair? Just? Morally right?
- If I were on the receiving end of my conduct, would I approve and agree, or would I take offense?
- Does my conduct give others reason to trust or distrust me?
- Am I willing to take an ethical stand when it is called for? Am I willing to make my ethical beliefs public in a way that makes it clear what I stand for?
- Do I exhibit the same conduct in my private life as I do in my public life?
- Can I take legitimate pride in the way I conduct myself and the example I set?
- Do I listen and understand the views of others?
- Do I question and confront different points of view in a constructive manner?
- Do I work to resolve differences and come to mutual agreement?
- Do I support others and show respect for their ideas?
- Will my conduct cause public embarrassment to someone else?

#### GLOSSARY OF TERMS

Appropriate behavior	It is the Commission's policy to provide its employees and members of the public with an environment that encourages safe, efficient, and productive work, and which is free of discrimination, including all forms of harassment. The Commission will not tolerate discrimination or verbal or physical conduct by any person which harasses, disrupts, or interferes with another person's work performance or which creates and intimidating, offensive, or hostile environment.
Attitude	The manner in which one shows one's dispositions, opinions and feelings
Behavior	External appearance or action; manner of behaving; carriage of oneself
Civility	Politeness, consideration, courtesy
Conduct	The way one acts; personal behavior
Courtesy	Politeness connected with kindness
Decorum	Suitable; proper; good taste in behavior
Manners	A way of acting; a style, method, or form; the way in which things are done
Point of order	An interruption of a meeting to question whether rules or bylaws are being broken, such as the speaker has strayed from the motion currently under consideration
Point of personal privilege	A challenge to a speaker to defend or apologize for comments that a fellow Commissioner considers offensive

Propriety	Conforming to acceptable standards of behavior
Protocol	The courtesies that are established as proper and correct
Respect	The act of noticing with attention; holding in esteem; courteous regard

# Code of Ethics Appendix

## Table of Contents

Document Title	Page or Link
<b>Cases</b>	
<i>Citizens United v. Federal Election Commission</i> , 588 .S. 310 (2010)	APP-001
<b>United States Code</b>	
Age Discrimination in Employment Act, 29 U.S.C. § 621, <i>ET SEQ.</i> (with EEOC annotations)	<a href="https://www.eeoc.gov/statutes/age-discrimination-employment-act-1967">https://www.eeoc.gov/statutes/age-discrimination-employment-act-1967</a>
Title VII of the Civil Rights Act, 42 U.S.C. § 2000e, <i>et seq.</i> (with EEOC annotations)	<a href="https://www.eeoc.gov/statutes/title-vii-civil-rights-act-1964">https://www.eeoc.gov/statutes/title-vii-civil-rights-act-1964</a>
Americans with Disabilities Act, 42 U.S.C. § 12101, <i>et seq.</i> (with EEOC annotations)	<a href="https://www.eeoc.gov/statutes/titles-i-and-v-americans-disabilities-act-1990-ada">https://www.eeoc.gov/statutes/titles-i-and-v-americans-disabilities-act-1990-ada</a>
<b>Arizona Constitutional Provisions</b>	
Ariz. Const. Art. VIII, Part 1, § 1	APP-080
Ariz. Const. Art. VIII, Part 1, § 2	APP-081
Ariz. Const. Art. VIII, Part 1, § 3	APP-082
Ariz. Const. Art. VIII, Part 1, § 4	APP-083
Ariz. Const. Art. VIII, Part 1, § 5	APP-084
Ariz. Const. Art. VIII, Part 1, § 6	APP-085
Ariz. Const. Art. VIII, Part 2, § 1	APP-086
Ariz. Const. Art. VIII, Part 2, § 2	APP-087
<b>Arizona Statutes</b>	
A.R.S. § 1-215	APP-088
A.R.S. § 12-2041	APP-094
A.R.S. § 12-2042	APP-095
A.R.S. § 12-2043	APP-096
A.R.S. § 12-2044	APP-097
A.R.S. § 12-2045	APP-098
A.R.S. § 13-1202	APP-099
A.R.S. § 16-192	APP-101
A.R.S. § 16-901	APP-104
A.R.S. § 16-905	APP-111
A.R.S. § 16-906	APP-113

**Table of Contents**

Document Title	Page or Link
A.R.S. § 16-911	APP-115
A.R.S. § 16-913	APP-119
A.R.S. § 16-916	APP-121
A.R.S. § 16-918	APP-123
A.R.S. § 16-922	APP-124
A.R.S. § 16-926	APP-126
A.R.S. § 18-444	APP-130
A.R.S. § 21-422	APP-134
A.R.S. § 38-311	APP-136
A.R.S. § 38-312	APP-137
A.R.S. § 38-431	APP-138
A.R.S. § 38-431.01	APP-140
A.R.S. § 38-431.02	APP-143
A.R.S. § 38-431.03	APP-147
A.R.S. § 38-431.04	APP-150
A.R.S. § 38-431.05	APP-151
A.R.S. § 38-431.06	APP-152
A.R.S. § 38-431.07	APP-154
A.R.S. § 38-431.08	APP-156
A.R.S. § 38-431.09	APP-158
A.R.S. § 38-441	APP-159
A.R.S. § 38-442	APP-160
A.R.S. § 38-443	APP-161
A.R.S. § 38-444	APP-162
A.R.S. § 38-445	APP-163
A.R.S. § 38-446	APP-164
A.R.S. § 38-447	APP-165
A.R.S. § 38-448	APP-166
A.R.S. § 38-449	APP-168
A.R.S. § 38-450	APP-170
A.R.S. § 38-501	APP-171
A.R.S. § 38-502	APP-172
A.R.S. § 38-503	APP-175
A.R.S. § 38-504	APP-177
A.R.S. § 38-505	APP-178
A.R.S. § 38-506	APP-179

**Table of Contents**

Document Title	Page or Link
A.R.S. § 38-507	APP-180
A.R.S. § 38-508	APP-181
A.R.S. § 38-509	APP-182
A.R.S. § 38-510	APP-183
A.R.S. § 38-511	APP-184
A.R.S. § 38-541	APP-186
A.R.S. § 38-543	APP-188
A.R.S. § 38-544	APP-189
A.R.S. § 38-545	APP-190
A.R.S. § 39-121	APP-191
A.R.S. § 39-121.01	APP-192
A.R.S. § 39-121.02	APP-194
A.R.S. § 39-121.03	APP-195
A.R.S. § 39-121.04	APP-197
A.R.S. § 39-122	APP-198
A.R.S. § 39-123	APP-199
A.R.S. § 39-123.01	APP-202
A.R.S. § 39-124	APP-203
A.R.S. § 39-125	APP-205
A.R.S. § 39-126	APP-206
A.R.S. § 39-126.01	APP-207
A.R.S. § 39-127	APP-208
A.R.S. § 39-128	APP-209
A.R.S. § 39-141	APP-210
A.R.S. § 39-142	APP-211
A.R.S. § 39-143	APP-212
A.R.S. § 39-144	APP-213
A.R.S. § 39-145	APP-214
A.R.S. § 39-161	APP-215
A.R.S. § 40-101	APP-216
A.R.S. § 41-753	APP-217
A.R.S. § 41-1231	APP-219
A.R.S. § 41-1232	APP-224
A.R.S. § 41-1232.01	APP-226
A.R.S. § 41-1232.02	APP-228
A.R.S. § 41-1232.03	APP-231

### Table of Contents

Document Title	Page or Link
A.R.S. § 41-1232.04	APP-234
A.R.S. § 41-1232.05	APP-236
A.R.S. § 41-1232.06	APP-237
A.R.S. § 41-1232.07	APP-238
A.R.S. § 41-1232.08	APP-239
A.R.S. § 41-1233	APP-241
A.R.S. § 41-1233.01	APP-242
A.R.S. § 41-1234	APP-243
A.R.S. § 41-1234.01	APP-245
A.R.S. § 41-1235	APP-246
A.R.S. § 41-1236	APP-247
A.R.S. § 41-1237	APP-248
A.R.S. § 41-1237.01	APP-249
A.R.S. § 41-1238	APP-250
A.R.S. § 41-1239	APP-251
<b>Arizona Session Laws</b>	
1992 Ariz. Sess. Law, ch. 134	APP-253
<b>Arizona Administrative Code</b>	
A.A.C. R2-5A-501	APP-258
A.A.C. R14-3-103	APP-260
A.A.C. R14-3-113	APP-262
<b>Other</b>	
NARUC Code of Ethics	APP-264
Arizona Code of Judicial Conduct	APP-267
<i>Black's Law Dictionary</i> (selections)	APP-293



KeyCite Yellow Flag - Negative Treatment

Declined to Extend by *Free Speech Coalition, Inc. v. Attorney General United States*, 3rd Cir (Pa ), September 1, 2020

130 S.Ct. 876

Supreme Court of the United States

CITIZENS UNITED, Appellant,

v.

FEDERAL ELECTION COMMISSION.

No. 08-205.

|  
Argued March 24, 2009.

|  
Reargued Sept. 9, 2009.

|  
Decided Jan. 21, 2010.

#### Synopsis

**Background:** Nonprofit corporation brought action against Federal Election Commission (FEC) for declaratory and injunctive relief, asserting that it feared it could be subject to civil and criminal penalties if it made through video-on-demand, within 30 days of primary elections, a film regarding a candidate seeking nomination as a political party's candidate in the next Presidential election. The United States District Court for the District of Columbia, A. Raymond Randolph, Circuit Judge, and Royce C. Lamberth and Richard W. Roberts, District Judges, 2008 WL 2788753, denied corporation's motion for preliminary injunction and granted summary judgment to Commission. Probable jurisdiction was noted.

**Holdings:** The Supreme Court, Justice Kennedy, held that:

[1] government may not, under the First Amendment, suppress political speech on the basis of the speaker's corporate identity, overruling *Austin v. Michigan Chamber of Commerce*, 494 U.S. 652, 110 S.Ct. 1391, 108 L.Ed.2d 652;

[2] federal statute barring independent corporate expenditures for electioneering communications violated First Amendment, overruling *McConnell v. Federal Election Com'n*, 540 U.S. 93, 124 S.Ct. 619, 157 L.Ed.2d 491;

[3] disclaimer and disclosure provisions of Bipartisan Campaign Reform Act of 2002 did not violate First Amendment, as applied to nonprofit corporation's film and three advertisements for the film.

Affirmed in part, reversed in part, and remanded.

Justice Thomas joined as to all of Justice Kennedy's opinion except for Part IV.

Justices Stevens, Ginsburg, Breyer, and Sotomayor, JJ., joined as to Part IV of Justice Kennedy's opinion.

Chief Justice Roberts filed a concurring opinion, in which Justice Alito joined.

Justice Scalia filed a concurring opinion, in which Justice Alito joined and Justice Thomas joined in part.

Justice Stevens filed an opinion concurring in part and dissenting in part, in which Justices Ginsburg, Breyer, and Sotomayor, joined.

Justice Thomas filed an opinion concurring in part and dissenting in part.

#### West Headnotes (24)

#### [1] Federal Courts ⇐ Review of federal district courts

Supreme Court would consider contention of nonprofit corporation that its film, regarding a candidate seeking nomination as a political party's candidate in the next Presidential election, did not qualify as an "electioneering communication" under federal statute prohibiting corporations from using their general treasury funds to make independent expenditures for electioneering communications within 30 days of a primary election or 60 days of general election for federal office, though nonprofit corporation raised the contention for the first time before the Supreme Court, where the district court had addressed it in its decision granting summary judgment to Federal Election Commission (FEC) with respect to

Decision No. 78040

nonprofit corporation's claims for declaratory and injunctive relief. Federal Election Campaign Act of 1971, §§ 304(f)(3)(A)(i), 316(b)(2), 2 U.S.C.A. §§ 434(f)(3)(A)(i), 441b(b)(2); 11 C.F.R. § 100.29(a)(2), (b)(3)(ii).

50 Cases that cite this headnote

[2] **Election Law** ⇨ Independent communications; express advocacy

Nonprofit corporation's film regarding a candidate seeking nomination as a political party's candidate in the next Presidential election, which the nonprofit corporation wished to distribute on cable television through video-on-demand, was an "electioneering communication," for purposes of federal statute prohibiting corporations from using their general treasury funds to make independent expenditures for electioneering communications within 30 days of a primary election or 60 days of general election for federal office; the film was a cable communication that referred to a clearly identified candidate for federal office, and distribution through video-on-demand could allow the communication to be received by 50,000 persons or more. Federal Election Campaign Act of 1971, §§ 304(f)(3)(A)(i), 316(b)(2), 2 U.S.C.A. §§ 434(f)(3)(A)(i), 441b(b)(2); 11 C.F.R. § 100.29(a)(2), (b)(3)(ii), (b)(7)(i)(G), (b)(7)(ii).

24 Cases that cite this headnote

[3] **Constitutional Law** ⇨ Freedom of Speech, Expression, and Press

Prolix laws chill speech, for First Amendment purposes, for the same reason that vague laws chill speech, i.e., people of common intelligence must necessarily guess at the law's meaning and differ as to its application. U.S.C.A. Const.Amend. 1.

21 Cases that cite this headnote

[4] **Election Law** ⇨ Independent communications; express advocacy

Nonprofit corporation's film regarding a candidate seeking nomination as a political party's candidate in the next Presidential election, which the nonprofit corporation wished to distribute on cable television through video-on-demand, was functionally equivalent to express advocacy for or against a specific candidate, for purposes of federal statute barring corporations from using general treasury funds to make independent expenditures that expressly advocate the election or defeat of a candidate, through any form of media, in connection with certain qualified federal elections; the film was, in essence, a feature-length negative advertisement that urged viewers to vote against the candidate, and in light of its historical footage, interviews with persons critical of candidate, and voiceover narration, the film would be understood by most viewers as an extended criticism of the candidate's character and her fitness for the office of the Presidency. Federal Election Campaign Act of 1971, § 316, 2 U.S.C.A. § 441b.

37 Cases that cite this headnote

[5] **Election Law** ⇨ Independent communications; express advocacy

The test for determining whether a communication is functionally equivalent to express advocacy for the election or defeat of a candidate, for purposes of federal statute barring corporations from using general treasury funds to make independent expenditures that expressly advocate the election or defeat of a candidate, through any form of media, in connection with certain qualified federal elections, is an objective test, under which a court should find that a communication is the functional equivalent of express advocacy only if it is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate. Federal Election Campaign Act of 1971, § 316, 2 U.S.C.A. § 441b.

52 Cases that cite this headnote

- [6] **Constitutional Law** ⇨ Freedom of speech, expression, and press

First Amendment standards must give the benefit of any doubt to protecting rather than stifling speech. U.S.C.A. Const.Amend. 1.

13 Cases that cite this headnote

- [7] **Federal Courts** ⇨ Review of federal district courts

Nonprofit corporation did not waive, for purposes of direct review by Supreme Court of decision of three-judge district court panel granting summary judgment to Federal Election Commission (FEC) in nonprofit corporation's action for declaratory and injunctive relief, its facial constitutional challenge, on grounds of violation of First Amendment protection of political speech, to federal statute prohibiting corporations from using their general treasury funds to make independent expenditures for electioneering communications within 30 days of a primary election or 60 days of general election for federal office, though in the district court the corporation had stipulated to the dismissal of the count in its complaint asserting the facial challenge and had proceeded on another count asserting an as-applied constitutional challenge, where the district court panel had addressed the facial challenge by noting that nonprofit corporation could prevail in the facial challenge only if the Supreme Court overruled controlling precedent. U.S.C.A. Const.Amend. 1; Federal Election Campaign Act of 1971, 316, 2 U.S.C.A. § 441b.

195 Cases that cite this headnote

- [8] **Federal Courts** ⇨ Review of federal district courts

The Supreme Court's practice permits review of an issue not pressed below, so long as it has been passed upon.

2 Cases that cite this headnote

- [9] **Federal Courts** ⇨ Review of federal district courts

Once a federal claim is properly presented on appeal, a party can make any argument in support of that claim; parties are not limited to the precise arguments they made below.

9 Cases that cite this headnote

- [10] **Constitutional Law** ⇨ Facial invalidity

**Constitutional Law** ⇨ Invalidity as applied

**Constitutional Law** ⇨ Pleading

The distinction between facial constitutional challenges and as-applied constitutional challenges goes to the breadth of the remedy employed by the court, not what must be pleaded in a complaint.

180 Cases that cite this headnote

- [11] **Constitutional Law** ⇨ Political speech, beliefs, or activity in general

First Amendment has its fullest and most urgent application to speech uttered during a campaign for political office. U.S.C.A. Const.Amend. 1.

75 Cases that cite this headnote

- [12] **Constitutional Law** ⇨ Political speech, beliefs, or activity in general

Laws that burden political speech are subject to strict scrutiny for a violation of the First Amendment, which level of scrutiny requires the Government to prove that the restriction furthers a compelling interest and is narrowly tailored to achieve that interest. U.S.C.A. Const.Amend. 1.

237 Cases that cite this headnote

- [13] **Constitutional Law** ⇨ Freedom of Speech, Expression, and Press

**Constitutional Law** ⇨ Viewpoint or idea discrimination

Premised on mistrust of governmental power, the First Amendment stands against attempts to disfavor certain subjects or viewpoints, and

Decision No. 78040

prohibited, too, are restrictions distinguishing among different speakers, allowing speech by some but not others. U.S.C.A. Const.Amend. 1.

89 Cases that cite this headnote

- [14] **Constitutional Law** ⇨ Political speech, beliefs, or activity in general

Political speech does not lose First Amendment protection simply because its source is a corporation. U.S.C.A. Const.Amend. 1.

142 Cases that cite this headnote

- [15] **Constitutional Law** ⇨ Right to Petition for Redress of Grievances

First Amendment protects the right of corporations to petition legislative and administrative bodies. U.S.C.A. Const.Amend. 1.

21 Cases that cite this headnote

- [16] **Courts** ⇨ Erroneous or injudicious decisions  
Supreme Court precedent is to be respected by the Court unless the most convincing of reasons demonstrates that adherence to it puts the Court on a course that is sure error.

11 Cases that cite this headnote

- [17] **Courts** ⇨ Previous Decisions as Controlling or as Precedents

Beyond workability, the relevant factors in deciding whether to adhere to the principle of stare decisis include the antiquity of the precedent, the reliance interests at stake, and whether the decision was well reasoned.

24 Cases that cite this headnote

- [18] **Courts** ⇨ Previous Decisions as Controlling or as Precedents

Stare decisis is a principle of policy and not a mechanical formula of adherence to the latest decision.

15 Cases that cite this headnote

- [19] **Courts** ⇨ Previous Decisions as Controlling or as Precedents

When neither party defends the reasoning of a precedent, the principle of adhering to that precedent through stare decisis is diminished.

18 Cases that cite this headnote

- [20] **Courts** ⇨ Previous Decisions as Controlling or as Precedents

With respect to stare decisis, reliance interests are important considerations in property and contract cases, where parties may have acted in conformance with existing legal rules in order to conduct transactions.

10 Cases that cite this headnote

- [21] **Constitutional Law** ⇨ Political speech, beliefs, or activity in general

Government may not, under the First Amendment, suppress political speech on the basis of the speaker's corporate identity; overruling *Austin v. Michigan Chamber of Commerce*, 494 U.S. 652, 110 S.Ct. 1391, 108 L.Ed.2d 652. U.S.C.A. Const.Amend. 1.

119 Cases that cite this headnote

- [22] **Constitutional Law** ⇨ Corporate expenditures

**Election Law** ⇨ Independent communications; express advocacy

Federal statute barring corporations from using general treasury funds to make independent expenditures that expressly advocate the election or defeat of a candidate, through any form of media, in connection with certain qualified federal elections, and, as amended by Bipartisan Campaign Reform Act of 2002 (BCRA), barring corporations from using general treasury funds to make independent expenditures for electioneering communications within 30 days of a primary election or 60 days of general

Decision No. 78040

election for federal office, violated First Amendment political speech rights of nonprofit corporation that wished to distribute on cable television, through video-on-demand, a film regarding a candidate seeking nomination as a political party's candidate in the next Presidential election; overruling *McConnell v. Federal Election Com'n*, 540 U.S. 93, 124 S.Ct. 619, 157 L.Ed.2d 491, U.S.C.A. Const.Amend. 1; Federal Election Campaign Act of 1971, § 316, 2 U.S.C.A. § 441b.

108 Cases that cite this headnote

[23] **Constitutional Law** ⇨ Corporate expenditures

**Constitutional Law** ⇨ Advertisements

**Election Law** ⇨ Independent communications; express advocacy

**Election Law** ⇨ Disclosure of Independent Expenditures

Provisions of Bipartisan Campaign Reform Act of 2002 (BCRA) requiring televised electioneering communications funded by anyone other than a candidate to include a disclaimer identifying the person or entity responsible for the content of the advertising, and requiring any person spending more than \$10,000 on electioneering communications within a calendar year to file a disclosure statement with the Federal Election Commission (FEC), did not violate First Amendment protection of political speech, as applied to a nonprofit corporation that wished to distribute on cable television, through video-on-demand, a film regarding a candidate seeking nomination as a political party's candidate in the next Presidential election, and that wished to run three advertisements for the film. U.S.C.A. Const.Amend. 1; Federal Election Campaign Act of 1971, §§ 304(f)(1, 2), 318(a)(3), (d)(2), 2 U.S.C.A. §§ 434(f)(1, 2), 441d(a)(3), (d)(2).

47 Cases that cite this headnote

[24] **Election Law** ⇨ Disclosure of Independent Expenditures

Three advertisements for nonprofit corporation's film regarding a candidate seeking nomination as a political party's candidate in the next Presidential election, which film the nonprofit corporation wished to distribute on cable television through video-on-demand shortly before primary election, were "electioneering communications," for purposes of provisions of Bipartisan Campaign Reform Act of 2002 (BCRA) requiring televised electioneering communications funded by anyone other than a candidate to include a disclaimer identifying the person or entity responsible for the content of the advertising; the advertisements referred to the candidate by name and contained pejorative references to her candidacy. Federal Election Campaign Act of 1971, § 318(a)(3), (d)(2), 2 U.S.C.A. § 441d(a)(3), (d)(2); 11 C.F.R. § 100.29.

11 Cases that cite this headnote

## West Codenotes

### Held Unconstitutional

2 U.S.C.A. § 441b

### Prior Version Recognized as Unconstitutional

18 U.S.C.A. § 608(e)

### \*\*880 Syllabus\*

As amended by § 203 of the Bipartisan Campaign Reform Act of 2002 (BCRA), federal law prohibits corporations and unions from using their general treasury \*\*881 funds to make independent expenditures for speech that is an "electioneering communication" or for speech that expressly advocates the election or defeat of a candidate. 2 U.S.C. § 441b. An electioneering communication is "any broadcast, cable, or satellite communication" that "refers to a clearly identified candidate for Federal office" and is made within 30 days of a primary election, § 434(f)(3)(A), and that is "publicly distributed," 11 CFR § 100.29(a)(2), which in "the case of a candidate for nomination for President ... means" that the communication "[c]an be received by 50,000 or more persons in a State where a primary election ... is being held within 30 days," § 100.29(b)(3)(ii). Corporations and

Decision No. 78040



unions may establish a political action committee (PAC) for express advocacy or electioneering communications purposes. 2 U.S.C. § 441b(b)(2). In *McConnell v. Federal Election Comm'n*, 540 U.S. 93, 203–209, 124 S.Ct. 619, 157 L.Ed.2d 491, this Court upheld limits on electioneering communications in a facial challenge, relying on the holding in *Austin v. Michigan Chamber of Commerce*, 494 U.S. 652, 110 S.Ct. 1391, 108 L.Ed.2d 652, that political speech may be banned based on the speaker's corporate identity.

In January 2008, appellant Citizens United, a nonprofit corporation, released a documentary (hereinafter *Hillary*) critical of then-Senator Hillary Clinton, a candidate for her party's Presidential nomination. Anticipating that it would make *Hillary* available on cable television through video-on-demand within 30 days of primary elections, Citizens United produced television ads to run on broadcast and cable television. Concerned about possible civil and criminal penalties for violating § 441b, it sought declaratory and injunctive relief, arguing that (1) § 441b is unconstitutional as applied to *Hillary*; and (2) BCRA's disclaimer, disclosure, and reporting requirements, BCRA §§ 201 and 311, were unconstitutional as applied to *Hillary* and the ads. The District Court denied Citizens United a preliminary injunction and granted appellee Federal Election Commission (FEC) summary judgment.

*Held:*

1. Because the question whether § 441b applies to *Hillary* cannot be resolved on other, narrower grounds without chilling political speech, this Court must consider the continuing effect of the speech suppression upheld in *Austin*. Pp. 888 – 896.

(a) Citizens United's narrower arguments—that *Hillary* is not an “electioneering communication” covered by § 441b because it is not “publicly distributed” under 11 CFR § 100.29(a)(2); that § 441b may not be applied to *Hillary* under *Federal Election Comm'n v. Wisconsin Right to Life, Inc.*, 551 U.S. 449, 127 S.Ct. 2652, 168 L.Ed.2d 329 (*WRTL*), which found § 441b unconstitutional as applied to speech that was not “express advocacy or its functional equivalent,” *id.*, at 481, 127 S.Ct. 2652 (opinion of ROBERTS, C.J.), determining that a communication “is the functional equivalent of express advocacy only if [it] is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate,” *id.*, at 469–470, 127 S.Ct. 2652; that § 441b should be invalidated as

applied to movies shown through video-on-demand because this delivery system has a lower risk of distorting the political process than do television ads; and that there should be an exception to § 441b's ban for nonprofit corporate political speech funded overwhelmingly by individuals—are not sustainable under a fair reading of the statute. Pp. 888 – 892.

(b) Thus, this case cannot be resolved on a narrower ground without chilling political \*\*882 speech, speech that is central to the First Amendment's meaning and purpose. Citizens United did not waive this challenge to *Austin* when it stipulated to dismissing the facial challenge below, since (1) even if such a challenge could be waived, this Court may reconsider *Austin* and § 441b's facial validity here because the District Court “passed upon” the issue, *Lebron v. National Railroad Passenger Corporation*, 513 U.S. 374, 379, 115 S.Ct. 961, 130 L.Ed.2d 902; (2) throughout the litigation, Citizens United has asserted a claim that the FEC has violated its right to free speech; and (3) the parties cannot enter into a stipulation that prevents the Court from considering remedies necessary to resolve a claim that has been preserved. Because Citizens United's narrower arguments are not sustainable, this Court must, in an exercise of its judicial responsibility, consider § 441b's facial validity. Any other course would prolong the substantial, nationwide chilling effect caused by § 441b's corporate expenditure ban. This conclusion is further supported by the following: (1) the uncertainty caused by the Government's litigating position; (2) substantial time would be required to clarify § 441b's application on the points raised by the Government's position in order to avoid any chilling effect caused by an improper interpretation; and (3) because speech itself is of primary importance to the integrity of the election process, any speech arguably within the reach of rules created for regulating political speech is chilled. The regulatory scheme at issue may not be a prior restraint in the strict sense. However, given its complexity and the deference courts show to administrative determinations, a speaker wishing to avoid criminal liability threats and the heavy costs of defending against FEC enforcement must ask a governmental agency for prior permission to speak. The restrictions thus function as the equivalent of a prior restraint, giving the FEC power analogous to the type of government practices that the First Amendment was drawn to prohibit. The ongoing chill on speech makes it necessary to invoke the earlier precedents that a statute that chills speech can and must be invalidated where its facial invalidity has been demonstrated. Pp. 892 – 896.



2. *Austin* is overruled, and thus provides no basis for allowing the Government to limit corporate independent expenditures. Hence, § 441b's restrictions on such expenditures are invalid and cannot be applied to *Hillary*. Given this conclusion, the part of *McConnell* that upheld BCRA § 203's extension of § 441b's restrictions on independent corporate expenditures is also overruled. Pp. 896 – 914.

(a) Although the First Amendment provides that “Congress shall make no law ... abridging the freedom of speech,” § 441b's prohibition on corporate independent expenditures is an outright ban on speech, backed by criminal sanctions. It is a ban notwithstanding the fact that a PAC created by a corporation can still speak, for a PAC is a separate association from the corporation. Because speech is an essential mechanism of democracy—it is the means to hold officials accountable to the people—political speech must prevail against laws that would suppress it by design or inadvertence. Laws burdening such speech are subject to strict scrutiny, which requires the Government to prove that the restriction “furthers a compelling interest and is narrowly tailored to achieve that interest.” *WRTL*, *supra*, at 464, 127 S.Ct. 2652. This language provides a sufficient framework for protecting the interests in this case. Premised on mistrust of governmental power, the First Amendment stands against attempts to disfavor certain subjects or viewpoints or to distinguish among different speakers, which \*\*883 may be a means to control content. The Government may also commit a constitutional wrong when by law it identifies certain preferred speakers. There is no basis for the proposition that, in the political speech context, the Government may impose restrictions on certain disfavored speakers. Both history and logic lead to this conclusion. Pp. 896 – 899.

(b) The Court has recognized that the First Amendment applies to corporations, *e.g.*, *First Nat. Bank of Boston v. Bellotti*, 435 U.S. 765, 778, n. 14, 98 S.Ct. 1407, 55 L.Ed.2d 707, and extended this protection to the context of political speech, see, *e.g.*, *NAACP v. Button*, 371 U.S. 415, 428–429, 83 S.Ct. 328, 9 L.Ed.2d 405. Addressing challenges to the Federal Election Campaign Act of 1971, the Court in *Buckley v. Valeo*, 424 U.S. 1 (*per curiam*), upheld limits on direct contributions to candidates, 18 U.S.C. § 608(b), recognizing a governmental interest in preventing *quid pro quo* corruption. 424 U.S., at 25–26, 96 S.Ct. 612. However, the Court invalidated § 608(e)'s expenditure ban, which applied to individuals, corporations, and unions, because it “fail[ed] to serve any substantial governmental interest in stemming the reality or appearance of corruption in the

electoral process,” *id.*, at 47–48, 96 S.Ct. 612. While *Buckley* did not consider a separate ban on corporate and union independent expenditures found in § 610, had that provision been challenged in *Buckley*'s wake, it could not have been squared with the precedent's reasoning and analysis. The *Buckley* Court did not invoke the overbreadth doctrine to suggest that § 608(e)'s expenditure ban would have been constitutional had it applied to corporations and unions but not individuals. Notwithstanding this precedent, Congress soon recodified § 610's corporate and union expenditure ban at 2 U.S.C. § 441b, the provision at issue. Less than two years after *Buckley*, *Bellotti* reaffirmed the First Amendment principle that the Government lacks the power to restrict political speech based on the speaker's corporate identity. 435 U.S., at 784–785, 98 S.Ct. 1407. Thus the law stood until *Austin* upheld a corporate independent expenditure restriction, bypassing *Buckley* and *Bellotti* by recognizing a new governmental interest in preventing “the corrosive and distorting effects of immense aggregations of [corporate] wealth ... that have little or no correlation to the public's support for the corporation's political ideas.” 494 U.S., at 660, 110 S.Ct. 1391. Pp. 899 – 903.

(c) This Court is confronted with conflicting lines of precedent: a pre-*Austin* line forbidding speech restrictions based on the speaker's corporate identity and a post-*Austin* line permitting them. Neither *Austin*'s antidistortion rationale nor the Government's other justifications support § 441b's restrictions. Pp. 903 – 911.

(1) The First Amendment prohibits Congress from fining or jailing citizens, or associations of citizens, for engaging in political speech, but *Austin*'s antidistortion rationale would permit the Government to ban political speech because the speaker is an association with a corporate form. Political speech is “indispensable to decisionmaking in a democracy, and this is no less true because the speech comes from a corporation.” *Bellotti*, *supra*, at 777, 98 S.Ct. 1407 (footnote omitted). This protection is inconsistent with *Austin*'s rationale, which is meant to prevent corporations from obtaining “ ‘an unfair advantage in the political marketplace’ ” by using “ ‘resources amassed in the economic marketplace.’ ” 494 U.S., at 659, 110 S.Ct. 1391. First Amendment protections do not depend on the speaker's “financial ability to engage in public discussion.” *Buckley*, *supra*, at 49, 96 S.Ct. 612. These conclusions were reaffirmed when the Court invalidated \*\*884 a BCRA provision that increased the cap on contributions to one candidate if the opponent made certain expenditures from personal funds.

*Davis v. Federal Election Comm'n*, 554 U.S. 724, 742, 128 S.Ct. 2759, 171 L.Ed.2d 737. Distinguishing wealthy individuals from corporations based on the latter's special advantages of, e.g., limited liability, does not suffice to allow laws prohibiting speech. It is irrelevant for First Amendment purposes that corporate funds may "have little or no correlation to the public's support for the corporation's political ideas." *Austin, supra*, at 660, 110 S.Ct. 1391. All speakers, including individuals and the media, use money amassed from the economic marketplace to fund their speech, and the First Amendment protects the resulting speech. Under the antidistortion rationale, Congress could also ban political speech of media corporations. Although currently exempt from § 441b, they accumulate wealth with the help of their corporate form, may have aggregations of wealth, and may express views "hav[ing] little or no correlation to the public's support" for those views. Differential treatment of media corporations and other corporations cannot be squared with the First Amendment, and there is no support for the view that the Amendment's original meaning would permit suppressing media corporations' political speech. *Austin* interferes with the "open marketplace" of ideas protected by the First Amendment. *New York State Bd. of Elections v. Lopez Torres*, 552 U.S. 196, 208, 128 S.Ct. 791, 169 L.Ed.2d 665. Its censorship is vast in its reach, suppressing the speech of both for-profit and nonprofit, both small and large, corporations. Pp. 903 – 908.

(2) This reasoning also shows the invalidity of the Government's other arguments. It reasons that corporate political speech can be banned to prevent corruption or its appearance. The *Buckley* Court found this rationale "sufficiently important" to allow contribution limits but refused to extend that reasoning to expenditure limits, 424 U.S., at 25, 96 S.Ct. 612, and the Court does not do so here. While a single *Bellotti* footnote purported to leave the question open, 435 U.S., at 788, n. 26, 98 S.Ct. 1407, this Court now concludes that independent expenditures, including those made by corporations, do not give rise to corruption or the appearance of corruption. That speakers may have influence over or access to elected officials does not mean that those officials are corrupt. And the appearance of influence or access will not cause the electorate to lose faith in this democracy. *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 129 S.Ct. 2252, 173 L.Ed.2d 1208, distinguished. Pp. 908 – 911.

(3) The Government's asserted interest in protecting shareholders from being compelled to fund corporate speech,

like the antidistortion rationale, would allow the Government to ban political speech even of media corporations. The statute is underinclusive; it only protects a dissenting shareholder's interests in certain media for 30 or 60 days before an election when such interests would be implicated in any media at any time. It is also overinclusive because it covers all corporations, including those with one shareholder. P. 911.

(4) Because § 441b is not limited to corporations or associations created in foreign countries or funded predominately by foreign shareholders, it would be overbroad even if the Court were to recognize a compelling governmental interest in limiting foreign influence over the Nation's political process. P. 911.

(d) The relevant factors in deciding whether to adhere to *stare decisis*, beyond workability—the precedent's antiquity, the reliance interests at stake, and whether \*\*885 the decision was well reasoned—counsel in favor of abandoning *Austin*, which itself contravened the precedents of *Buckley* and *Bellotti*. As already explained, *Austin* was not well reasoned. It is also undermined by experience since its announcement. Political speech is so ingrained in this country's culture that speakers find ways around campaign finance laws. Rapid changes in technology—and the creative dynamic inherent in the concept of free expression—counsel against upholding a law that restricts political speech in certain media or by certain speakers. In addition, no serious reliance issues are at stake. Thus, due consideration leads to the conclusion that *Austin* should be overruled. The Court returns to the principle established in *Buckley* and *Bellotti* that the Government may not suppress political speech based on the speaker's corporate identity. No sufficient governmental interest justifies limits on the political speech of nonprofit or for-profit corporations. Pp. 911 – 913.

3. BCRA §§ 201 and 311 are valid as applied to the ads for *Hillary* and to the movie itself. Pp. 913 – 917.

(a) Disclaimer and disclosure requirements may burden the ability to speak, but they "impose no ceiling on campaign-related activities," *Buckley, supra*, at 64, 96 S.Ct. 612, or "prevent anyone from speaking," *McCormell*, 540 U.S., at 201, 124 S.Ct. 619. The *Buckley* Court explained that disclosure can be justified by a governmental interest in providing "the electorate with information" about election-related spending sources, 424 U.S., at 66. The *McCormell* Court applied this interest in rejecting facial challenges to §§ 201 and 311. 540 U.S., at 196, 124 S.Ct. 619. However,

the Court acknowledged that as-applied challenges would be available if a group could show a “ ‘reasonable probability’ ” that disclosing its contributors’ names would “ ‘subject them to threats, harassment, or reprisals from either Government officials or private parties.’ ” *Id.*, at 198, 124 S.Ct. 619. Pp. 913 – 914.

(b) The disclaimer and disclosure requirements are valid as applied to Citizens United’s ads. They fall within BCRA’s “electioneering communication” definition: They referred to then-Senator Clinton by name shortly before a primary and contained pejorative references to her candidacy. Section 311 disclaimers provide information to the electorate, *McConnell*, *supra*, at 196, 124 S.Ct. 619, and “insure that the voters are fully informed” about who is speaking, *Buckley*, *supra*, at 76, 96 S.Ct. 612. At the very least, they avoid confusion by making clear that the ads are not funded by a candidate or political party. Citizens United’s arguments that § 311 is underinclusive because it requires disclaimers for broadcast advertisements but not for print or Internet advertising and that § 311 decreases the quantity and effectiveness of the group’s speech were rejected in *McConnell*. This Court also rejects their contention that § 201’s disclosure requirements must be confined to speech that is the functional equivalent of express advocacy under *WRTL*’s test for restrictions on independent expenditures, 551 U.S., at 469–476, 127 S.Ct. 2652 (opinion of ROBERTS, C.J.). Disclosure is the less restrictive alternative to more comprehensive speech regulations. Such requirements have been upheld in *Buckley* and *McConnell*. Citizens United’s argument that no informational interest justifies applying § 201 to its ads is similar to the argument this Court rejected with regard to disclaimers. Citizens United finally claims that disclosure requirements can chill donations by exposing donors to retaliation, but offers no evidence that its members face the type of threats, harassment, or reprisals that might make § 201 unconstitutional as applied. Pp. 914 – 916.

**\*\*886** (c) For these same reasons, this Court affirms the application of the §§ 201 and 311 disclaimer and disclosure requirements to *Hillary*. Pp. 916 – 917.

Reversed in part, affirmed in part, and remanded.

KENNEDY, J., delivered the opinion of the Court, in which ROBERTS, C.J., and SCALIA and ALITO, JJ., joined, in which THOMAS, J., joined as to all but Part IV, and in which STEVENS, GINSBURG, BREYER, and SOTOMAYOR, JJ., joined as to Part IV. ROBERTS, C.J., filed a concurring

opinion, in which ALITO, J., joined, *post*, pp. 917 – 925. SCALIA, J., filed a concurring opinion, in which ALITO, J., joined, and in which THOMAS, J., joined in part, *post*, pp. 925 – 929. STEVENS, J., filed an opinion concurring in part and dissenting in part, in which GINSBURG, BREYER, and SOTOMAYOR, JJ., joined, *post*, pp. 929 – 979. THOMAS, J., filed an opinion concurring in part and dissenting in part, *post*, pp. 979 – 982.

#### Attorneys and Law Firms

Theodore B. Olson, for Appellant.

Floyd Abrams, for Senator Mitch McConnell as amicus curiae, by special leave of the Court, supporting the Appellant.

Elena Kagan, Solicitor General, Washington, D.C., for Respondent.

Seth P. Waxman, for Senator John McCain, as amici curiae, by special leave of the Court, supporting the Appellee.

Michael Boos, Fairfax, VA, Theodore B. Olson, Matthew D. McGill, Amir C. Tayrani, Justin S. Herring, Gibson, Dunn & Crutcher LLP, Washington, D.C., for Appellant.

#### Opinion

Justice KENNEDY delivered the opinion of the Court.

**\*318** Federal law prohibits corporations and unions from using their general treasury funds to make independent expenditures **\*319** for speech defined as an “electioneering communication” or for speech expressly advocating the election or defeat of a candidate. 2 U.S.C. § 441b. Limits on electioneering communications were upheld in *McConnell v. Federal Election Comm’n*, 540 U.S. 93, 203–209, 124 S.Ct. 619, 157 L.Ed.2d 491 (2003). The holding of *McConnell* rested to a large extent on an earlier case, *Austin v. Michigan Chamber of Commerce*, 494 U.S. 652, 110 S.Ct. 1391, 108 L.Ed.2d 652 (1990). *Austin* had held that political speech may be banned based on the speaker’s corporate identity.

In this case we are asked to reconsider *Austin* and, in effect, *McConnell*. It has been noted that “*Austin* was a significant departure from ancient First Amendment principles,” *Federal Election Comm’n v. Wisconsin Right to Life, Inc.*, 551 U.S. 449, 490, 127 S.Ct. 2652, 168 L.Ed.2d 329 (2007) (*WRTL*) (SCALIA, J., concurring in part and concurring in judgment). We agree with that conclusion and hold that *stare decisis*

Decision No. 78040

does not compel the continued acceptance of *Austin*. The Government may regulate corporate political speech through disclaimer and disclosure requirements, but it may not suppress that speech altogether. We turn to the case now before us.

I

A

Citizens United is a nonprofit corporation. It brought this action in the United States District Court for the District of \*\*887 Columbia. A three-judge court later convened to hear the cause. The resulting judgment gives rise to this appeal.

Citizens United has an annual budget of about \$12 million. Most of its funds are from donations by individuals; but, in addition, it accepts a small portion of its funds from for-profit corporations.

In January 2008, Citizens United released a film entitled *Hillary: The Movie*. We refer to the film as *Hillary*. It is a 90-minute documentary about then-Senator Hillary Clinton, who was a candidate in the Democratic Party's 2008 Presidential primary elections. *Hillary* mentions Senator \*320 Clinton by name and depicts interviews with political commentators and other persons, most of them quite critical of Senator Clinton. *Hillary* was released in theaters and on DVD, but Citizens United wanted to increase distribution by making it available through video-on-demand.

Video-on-demand allows digital cable subscribers to select programming from various menus, including movies, television shows, sports, news, and music. The viewer can watch the program at any time and can elect to rewind or pause the program. In December 2007, a cable company offered, for a payment of \$1.2 million, to make *Hillary* available on a video-on-demand channel called "Elections '08." App. 255a–257a. Some video-on-demand services require viewers to pay a small fee to view a selected program, but here the proposal was to make *Hillary* available to viewers free of charge.

To implement the proposal, Citizens United was prepared to pay for the video-on-demand; and to promote the film, it produced two 10-second ads and one 30-second ad for *Hillary*. Each ad includes a short (and, in our view, pejorative) statement about Senator Clinton, followed by the name of

the movie and the movie's Web site address. *Id.*, at 26a–27a. Citizens United desired to promote the video-on-demand offering by running advertisements on broadcast and cable television.

B

Before the Bipartisan Campaign Reform Act of 2002 (BCRA), federal law prohibited—and still does prohibit—corporations and unions from using general treasury funds to make direct contributions to candidates or independent expenditures that expressly advocate the election or defeat of a candidate, through any form of media, in connection with certain qualified federal elections. 2 U.S.C. § 441b (2000 ed.); see *McConnell, supra*, at 204, and n. 87, 124 S.Ct. 619; *Federal Election Comm'n v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238, 249, 107 S.Ct. 616, 93 L.Ed.2d 539 (1986) (*MCFL*). BCRA § 203 amended \*321 § 441b to prohibit any "electioneering communication" as well. 2 U.S.C. § 441b(b)(2) (2006 ed.). An electioneering communication is defined as "any broadcast, cable, or satellite communication" that "refers to a clearly identified candidate for Federal office" and is made within 30 days of a primary or 60 days of a general election. § 434(f)(3)(A). The Federal Election Commission's (FEC) regulations further define an electioneering communication as a communication that is "publicly distributed." 11 CFR § 100.29(a)(2) (2009). "In the case of a candidate for nomination for President ... *publicly distributed* means" that the communication "[c]an be received by 50,000 or more persons in a State where a primary election ... is being held within 30 days." § 100.29(b)(3)(ii) (A). Corporations and unions are barred from using their general treasury funds for express advocacy or electioneering communications. They may establish, however, a "separate segregated fund" (known as a political action committee, or PAC) for these purposes. \*\*888 2 U.S.C. § 441b(b) (2). The moneys received by the segregated fund are limited to donations from stockholders and employees of the corporation or, in the case of unions, members of the union. *Ibid.*

C

Citizens United wanted to make *Hillary* available through video-on-demand within 30 days of the 2008 primary elections. It feared, however, that both the film and the ads would be covered by § 441b's ban on corporate-funded

Decision No. 78040



independent expenditures, thus subjecting the corporation to civil and criminal penalties under § 437g. In December 2007, Citizens United sought declaratory and injunctive relief against the FEC. It argued that (1) § 441b is unconstitutional as applied to *Hillary*; and (2) BCRA's disclaimer and disclosure requirements, BCRA §§ 201 and 311, 116 Stat. 88, 105, are unconstitutional as applied to *Hillary* and to the three ads for the movie.

\*322 The District Court denied Citizens United's motion for a preliminary injunction, 530 F.Supp.2d 274 (D.D.C.2008) (*per curiam*), and then granted the FEC's motion for summary judgment, App. 261a–262a. See *id.*, at 261a (“Based on the reasoning of our prior opinion, we find that the [FEC] is entitled to judgment as a matter of law. See *Citizen[s] United v. FEC*, 530 F.Supp.2d 274 (D.D.C.2008) (denying Citizens United's request for a preliminary injunction)”). The court held that § 441b was facially constitutional under *McConnell*, and that § 441b was constitutional as applied to *Hillary* because it was “susceptible of no other interpretation than to inform the electorate that Senator Clinton is unfit for office, that the United States would be a dangerous place in a President Hillary Clinton world, and that viewers should vote against her.” 530 F.Supp.2d, at 279. The court also rejected Citizens United's challenge to BCRA's disclaimer and disclosure requirements. It noted that “the Supreme Court has written approvingly of disclosure provisions triggered by political speech even though the speech itself was constitutionally protected under the First Amendment.” *Id.*, at 281.

We noted probable jurisdiction, 555 U.S. 1028, 128 S.Ct. 1471, 170 L.Ed.2d 294 (2008). The case was reargued in this Court after the Court asked the parties to file supplemental briefs addressing whether we should overrule either or both *Austin* and the part of *McConnell* which addresses the facial validity of 2 U.S.C. § 441b. See 557 U.S. 932, 128 S.Ct. 1732, 170 L.Ed.2d 511 (2009).

## II

Before considering whether *Austin* should be overruled, we first address whether Citizens United's claim that § 441b cannot be applied to *Hillary* may be resolved on other, narrower grounds.

## A

[1] [2] Citizens United contends that § 441b does not cover *Hillary*, as a matter of statutory interpretation, because the film \*323 does not qualify as an “electioneering communication.” § 441b(b)(2). Citizens United raises this issue for the first time before us, but we consider the issue because “it was addressed by the court below.” *Lebron v. National Railroad Passenger Corporation*, 513 U.S. 374, 379, 115 S.Ct. 961, 130 L.Ed.2d 902 (1995); see 530 F.Supp.2d, at 277, n. 6. Under the definition of electioneering communication, the video-on-demand showing of *Hillary* on cable television would have been a “cable ... communication” that “refer[red] to a clearly identified candidate for Federal office” and that was made within 30 days of a primary election. 2 U.S.C. § 434(f)(3)(A)(i). Citizens United, however, argues that *Hillary* was not “publicly \*\*889 distributed,” because a single video-on-demand transmission is sent only to a requesting cable converter box and each separate transmission, in most instances, will be seen by just one household—not 50,000 or more persons. 11 CFR § 100.29(a)(2); see § 100.29(b)(3)(ii).

This argument ignores the regulation's instruction on how to determine whether a cable transmission “[c]an be received by 50,000 or more persons.” § 100.29(b)(3)(ii). The regulation provides that the number of people who can receive a cable transmission is determined by the number of cable subscribers in the relevant area. §§ 100.29(b)(7)(i)(G), (ii). Here, Citizens United wanted to use a cable video-on-demand system that had 34.5 million subscribers nationwide. App. 256a. Thus, *Hillary* could have been received by 50,000 persons or more.

One *amici* brief asks us, alternatively, to construe the condition that the communication “[c]an be received by 50,000 or more persons,” § 100.29(b)(3)(ii)(A), to require “a plausible likelihood that the communication will be viewed by 50,000 or more potential voters”—as opposed to requiring only that the communication is “technologically capable” of being seen by that many people. Brief for Former Officials of the American Civil Liberties Union 5. Whether the population and demographic statistics in a proposed viewing area consisted \*324 of 50,000 registered voters—but not “infants, pre-teens, or otherwise electorally ineligible recipients”—would be a required determination, subject to judicial challenge and review, in any case where the issue was in doubt. *Id.*, at 6.

[3] In our view the statute cannot be saved by limiting the reach of 2 U.S.C. § 441b through this suggested interpretation. In addition to the costs and burdens of litigation, this result would require a calculation as to the number of people a particular communication is likely to reach, with an inaccurate estimate potentially subjecting the speaker to criminal sanctions. The First Amendment does not permit laws that force speakers to retain a campaign finance attorney, conduct demographic marketing research, or seek declaratory rulings before discussing the most salient political issues of our day. Prolix laws chill speech for the same reason that vague laws chill speech: People “of common intelligence must necessarily guess at [the law’s] meaning and differ as to its application.” *Connally v. General Constr. Co.*, 269 U.S. 385, 391, 46 S.Ct. 126, 70 L.Ed. 322 (1926). The Government may not render a ban on political speech constitutional by carving out a limited exemption through an amorphous regulatory interpretation. We must reject the approach suggested by the *amici*. Section 441b covers *Hillary*.

B

[4] [5] Citizens United next argues that § 441b may not be applied to *Hillary* under the approach taken in *WRTL*. *McConnell* decided that § 441b(b)(2)’s definition of an “electioneering communication” was facially constitutional insofar as it restricted speech that was “the functional equivalent of express advocacy” for or against a specific candidate. 540 U.S., at 206, 124 S.Ct. 619. *WRTL* then found an unconstitutional application of § 441b where the speech was not “express advocacy or its functional equivalent.” 551 U.S., at 481, 127 S.Ct. 2652 (opinion of ROBERTS, C. J.). As explained by THE CHIEF JUSTICE’s controlling opinion in *WRTL*, the functional-equivalent test is objective: “[A] court should find that [a communication] is \*325 the functional equivalent of express advocacy only if [it] is susceptible of no reasonable interpretation other than as an \*\*890 appeal to vote for or against a specific candidate.” *Id.*, at 469–470, 127 S.Ct. 2652.

Under this test, *Hillary* is equivalent to express advocacy. The movie, in essence, is a feature-length negative advertisement that urges viewers to vote against Senator Clinton for President. In light of historical footage, interviews with persons critical of her, and voiceover narration, the film would be understood by most viewers as an extended criticism of Senator Clinton’s character and her fitness for the office of

the Presidency. The narrative may contain more suggestions and arguments than facts, but there is little doubt that the thesis of the film is that she is unfit for the Presidency. The movie concentrates on alleged wrongdoing during the Clinton administration, Senator Clinton’s qualifications and fitness for office, and policies the commentators predict she would pursue if elected President. It calls Senator Clinton “Machiavellian,” App. 64a, and asks whether she is “the most qualified to hit the ground running if elected President,” *id.*, at 88a. The narrator reminds viewers that “Americans have never been keen on dynasties” and that “a vote for Hillary is a vote to continue 20 years of a Bush or a Clinton in the White House,” *id.*, at 143a–144a.

Citizens United argues that *Hillary* is just “a documentary film that examines certain historical events.” Brief for Appellant 35. We disagree. The movie’s consistent emphasis is on the relevance of these events to Senator Clinton’s candidacy for President. The narrator begins by asking “could [Senator Clinton] become the first female President in the history of the United States?” App. 35a. And the narrator reiterates the movie’s message in his closing line: “Finally, before America decides on our next president, voters should need no reminders of ... what’s at stake—the well being and prosperity of our nation.” *Id.*, at 144a–145a.

\*326 As the District Court found, there is no reasonable interpretation of *Hillary* other than as an appeal to vote against Senator Clinton. Under the standard stated in *McConnell* and further elaborated in *WRTL*, the film qualifies as the functional equivalent of express advocacy.

C

Citizens United further contends that § 441b should be invalidated as applied to movies shown through video-on-demand, arguing that this delivery system has a lower risk of distorting the political process than do television ads. Cf. *McConnell*, *supra*, at 207, 124 S.Ct. 619. On what we might call conventional television, advertising spots reach viewers who have chosen a channel or a program for reasons unrelated to the advertising. With video-on-demand, by contrast, the viewer selects a program after taking “a series of affirmative steps”: subscribing to cable; navigating through various menus; and selecting the program. See *Reno v. American Civil Liberties Union*, 521 U.S. 844, 867, 117 S.Ct. 2329, 138 L.Ed.2d 874 (1997).



While some means of communication may be less effective than others at influencing the public in different contexts, any effort by the Judiciary to decide which means of communications are to be preferred for the particular type of message and speaker would raise questions as to the courts' own lawful authority. Substantial questions would arise if courts were to begin saying what means of speech should be preferred or disfavored. And in all events, those differentiations might soon prove to be irrelevant or outdated by technologies that are in rapid flux. See *Turner Broadcasting System, Inc. v. FCC*, 512 U.S. 622, 639, 114 S.Ct. 2445, 129 L.Ed.2d 497 (1994).

**\*\*891 [6]** Courts, too, are bound by the First Amendment. We must decline to draw, and then redraw, constitutional lines based on the particular media or technology used to disseminate political speech from a particular speaker. It must be noted, moreover, that this undertaking would require substantial litigation over an extended time, all to interpret a **\*327** law that beyond doubt discloses serious First Amendment flaws. The interpretive process itself would create an inevitable, pervasive, and serious risk of chilling protected speech pending the drawing of fine distinctions that, in the end, would themselves be questionable. First Amendment standards, however, "must give the benefit of any doubt to protecting rather than stifling speech." *WRTL*, 551 U.S., at 469, 127 S.Ct. 2652 (opinion of ROBERTS, C.J.) (citing *New York Times Co. v. Sullivan*, 376 U.S. 254, 269–270, 84 S.Ct. 710, 11 L.Ed.2d 686 (1964)).

D

Citizens United also asks us to carve out an exception to § 441b's expenditure ban for nonprofit corporate political speech funded overwhelmingly by individuals. As an alternative to reconsidering *Austin*, the Government also seems to prefer this approach. This line of analysis, however, would be unavailing.

In *MCFL*, the Court found unconstitutional § 441b's restrictions on corporate expenditures as applied to nonprofit corporations that were formed for the sole purpose of promoting political ideas, did not engage in business activities, and did not accept contributions from for-profit corporations or labor unions. 479 U.S., at 263–264, 107 S.Ct. 616; see also 11 CFR § 114.10. BCRA's so-called Wellstone Amendment applied § 441b's expenditure ban to all nonprofit corporations. See 2 U.S.C. § 441b(c)(6); *McConnell*, 540

U.S., at 209, 124 S.Ct. 619. *McConnell* then interpreted the Wellstone Amendment to retain the *MCFL* exemption to § 441b's expenditure prohibition. 540 U.S., at 211, 124 S.Ct. 619. Citizens United does not qualify for the *MCFL* exemption, however, since some funds used to make the movie were donations from for-profit corporations.

The Government suggests we could find BCRA's Wellstone Amendment unconstitutional, sever it from the statute, and hold that Citizens United's speech is exempt from § 441b's ban under BCRA's Snowe–Jeffords Amendment, § 441b(c)(2). See Tr. of Oral Arg. 37–38 (Sept. 9, 2009). The Snowe–Jeffords Amendment operates as a backup provision that **\*328** only takes effect if the Wellstone Amendment is invalidated. See *McConnell*, *supra*, at 339, 124 S.Ct. 619 (KENNEDY, J., concurring in judgment in part and dissenting in part). The Snowe–Jeffords Amendment would exempt from § 441b's expenditure ban the political speech of certain nonprofit corporations if the speech were funded "exclusively" by individual donors and the funds were maintained in a segregated account. § 441b(c)(2). Citizens United would not qualify for the Snowe–Jeffords exemption, under its terms as written, because *Hillary* was funded in part with donations from for-profit corporations.

Consequently, to hold for Citizens United on this argument, the Court would be required to revise the text of *MCFL*, sever BCRA's Wellstone Amendment, § 441b(c)(6), and ignore the plain text of BCRA's Snowe–Jeffords Amendment, § 441b(c)(2). If the Court decided to create a *de minimis* exception to *MCFL* or the Snowe–Jeffords Amendment, the result would be to allow for-profit corporate general treasury funds to be spent for independent expenditures that support candidates. There is no principled basis **\*\*892** for doing this without rewriting *Austin's* holding that the Government can restrict corporate independent expenditures for political speech.

Though it is true that the Court should construe statutes as necessary to avoid constitutional questions, the series of steps suggested would be difficult to take in view of the language of the statute. In addition to those difficulties the Government's suggestion is troubling for still another reason. The Government does not say that it agrees with the interpretation it wants us to consider. See Supp. Brief for Appellee 3, n. 1 ("Some courts" have implied a *de minimis* exception, and "appellant would appear to be covered by these decisions"). Presumably it would find textual difficulties in this approach too. The Government, like any party, can make arguments in the alternative; but it ought to say if there is

merit to an alternative proposal instead of \*329 merely suggesting it. This is especially true in the context of the First Amendment. As the Government stated, this case “would require a remand” to apply a *de minimis* standard. Tr. of Oral Arg. 39 (Sept. 9, 2009). Applying this standard would thus require case-by-case determinations. But archetypical political speech would be chilled in the meantime. “ ‘First Amendment freedoms need breathing space to survive.’ ” *WRTL*, *supra*, at 468 – 469, 127 S.Ct. 2652 (opinion of ROBERTS, C.J.) (quoting *NAACP v. Button*, 371 U.S. 415, 433, 83 S.Ct. 328, 9 L.Ed.2d 405 (1963)). We decline to adopt an interpretation that requires intricate case-by-case determinations to verify whether political speech is banned, especially if we are convinced that, in the end, this corporation has a constitutional right to speak on this subject.

E

As the foregoing analysis confirms, the Court cannot resolve this case on a narrower ground without chilling political speech, speech that is central to the meaning and purpose of the First Amendment. See *Morse v. Frederick*, 551 U.S. 393, 403, 127 S.Ct. 2618, 168 L.Ed.2d 290 (2007). It is not judicial restraint to accept an unsound, narrow argument just so the Court can avoid another argument with broader implications. Indeed, a court would be remiss in performing its duties were it to accept an unsound principle merely to avoid the necessity of making a broader ruling. Here, the lack of a valid basis for an alternative ruling requires full consideration of the continuing effect of the speech suppression upheld in *Austin*.

[7] Citizens United stipulated to dismissing count 5 of its complaint, which raised a facial challenge to § 441b, even though count 3 raised an as-applied challenge. See App. 23a (count 3: “As applied to *Hillary*, [§ 441b] is unconstitutional under the First Amendment guarantees of free expression and association”). The Government argues that Citizens United waived its challenge to *Austin* by dismissing count 5. We disagree.

\*330 [8] First, even if a party could somehow waive a facial challenge while preserving an as-applied challenge, that would not prevent the Court from reconsidering *Austin* or addressing the facial validity of § 441b in this case. “Our practice ‘permit[s] review of an issue not pressed [below] so long as it has been passed upon....’ ” *Lebron*, 513 U.S., at 379, 115 S.Ct. 961 (quoting *United States v. Williams*, 504 U.S. 36, 41, 112 S.Ct. 1735, 118 L.Ed.2d 352 (1992); first

alteration in original). And here, the District Court addressed Citizens United’s facial challenge. See 530 F.Supp.2d, at 278 (“Citizens wants us to enjoin the operation of BCRA § 203 as a facially unconstitutional burden on the First Amendment \*\*893 right to freedom of speech”). In rejecting the claim, it noted that it “would have to overrule *McConnell*” for Citizens United to prevail on its facial challenge and that “[o]nly the Supreme Court may overrule its decisions.” *Ibid.* (citing *Rodriguez de Quijas v. Shearson/American Express, Inc.*, 490 U.S. 477, 484, 109 S.Ct. 1917, 104 L.Ed.2d 526 (1989)). The District Court did not provide much analysis regarding the facial challenge because it could not ignore the controlling Supreme Court decisions in *Austin* and/or *McConnell*. Even so, the District Court did “ ‘pas[s] upon’ ” the issue. *Lebron*, *supra*, at 379, 115 S.Ct. 961. Furthermore, the District Court’s later opinion, which granted the FEC summary judgment, was “[b]ased on the reasoning of [its] prior opinion,” which included the discussion of the facial challenge. App. 261a (citing 530 F.Supp.2d 274). After the District Court addressed the facial validity of the statute, Citizens United raised its challenge to *Austin* in this Court. See Brief for Appellant 30 (“*Austin* was wrongly decided and should be overruled”); *id.*, at 30–32. In these circumstances, it is necessary to consider Citizens United’s challenge to *Austin* and the facial validity of § 441b’s expenditure ban.

[9] Second, throughout the litigation, Citizens United has asserted a claim that the FEC has violated its First Amendment right to free speech. All concede that this claim is properly before us. And “ ‘[o]nce a federal claim is properly \*331 presented, a party can make any argument in support of that claim; parties are not limited to the precise arguments they made below.’ ” *Lebron*, *supra*, at 379, 115 S.Ct. 961 (quoting *Yee v. Escondido*, 503 U.S. 519, 534, 112 S.Ct. 1522, 118 L.Ed.2d 153 (1992); alteration in original). Citizens United’s argument that *Austin* should be overruled is “not a new claim.” *Lebron*, 513 U.S., at 379, 115 S.Ct. 961. Rather, it is—at most—“a new argument to support what has been [a] consistent claim: that [the FEC] did not accord [Citizens United] the rights it was obliged to provide by the First Amendment.” *Ibid.*

[10] Third, the distinction between facial and as-applied challenges is not so well defined that it has some automatic effect or that it must always control the pleadings and disposition in every case involving a constitutional challenge. The distinction is both instructive and necessary, for it goes to the breadth of the remedy employed by the Court, not what must be pleaded in a complaint. See *United States v.*

*Treasury Employees*, 513 U.S. 454, 477–478, 115 S.Ct. 1003, 130 L.Ed.2d 964 (1995) (contrasting “a facial challenge” with “a narrower remedy”). The parties cannot enter into a stipulation that prevents the Court from considering certain remedies if those remedies are necessary to resolve a claim that has been preserved. Citizens United has preserved its First Amendment challenge to § 441b as applied to the facts of its case; and given all the circumstances, we cannot easily address that issue without assuming a premise—the permissibility of restricting corporate political speech—that is itself in doubt. See Fallon, As-Applied and Facial Challenges and Third-Party Standing, 113 Harv. L.Rev. 1321, 1339 (2000) (“[O]nce a case is brought, no general categorical line bars a court from making broader pronouncements of invalidity in properly ‘as-applied’ cases”); *id.*, at 1327–1328. As our request for supplemental briefing implied, Citizens United’s claim implicates the validity of *Austin*, which in turn implicates the facial validity of § 441b.

When the statute now at issue came before the Court in *McConnell*, both the majority and the dissenting opinions considered the question of its facial validity. The holding and validity of *Austin* were \*\*894 essential to the reasoning of the *McConnell* majority opinion, which upheld BCRA’s extension of § 441b. See 540 U.S., at 205, 124 S.Ct. 619 (quoting *Austin*, 494 U.S., at 660, 110 S.Ct. 1391). *McConnell* permitted federal felony punishment for speech by all corporations, including nonprofit ones, that speak on prohibited subjects shortly before federal elections. See 540 U.S., at 203–209, 124 S.Ct. 619. Four Members of the *McConnell* Court would have overruled *Austin*, including Chief Justice Rehnquist, who had joined the Court’s opinion in *Austin* but reconsidered that conclusion. See 540 U.S., at 256–262, 124 S.Ct. 619 (SCALIA, J., concurring in part, concurring in judgment in part, and dissenting in part); *id.*, at 273–275, 124 S.Ct. 619 (THOMAS, J., concurring in part, concurring in result in part, concurring in judgment in part, and dissenting in part); *id.*, at 322–338, 124 S.Ct. 619 (opinion of KENNEDY, J., joined by Rehnquist, C.J., and Scalia, J.). That inquiry into the facial validity of the statute was facilitated by the extensive record, which was “over 100,000 pages” long, made in the three-judge District Court. *McConnell v. Federal Election Comm’n*, 251 F.Supp.2d 176, 209 (D.D.C.2003) (*per curiam*) (*McConnell I*). It is not the case, then, that the Court today is premature in interpreting § 441b “on the basis of [a] factually barebones recor[d].” *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442, 450, 128 S.Ct. 1184, 170 L.Ed.2d 151

(2008) (quoting *Sabri v. United States*, 541 U.S. 600, 609, 124 S.Ct. 1941, 158 L.Ed.2d 891 (2004)).

The *McConnell* majority considered whether the statute was facially invalid. An as-applied challenge was brought in *Wisconsin Right to Life, Inc. v. Federal Election Comm’n*, 546 U.S. 410, 411–412, 126 S.Ct. 1016, 163 L.Ed.2d 990 (2006) (*per curiam*), and the Court confirmed that the challenge could be maintained. Then, in *WRTL*, the controlling opinion of the Court not only entertained an as-applied challenge but also sustained it. Three Justices noted that they would continue to maintain the position that the record in *McConnell* demonstrated the invalidity of the Act on its face. 551 U.S., at 485–504, 127 S.Ct. 2652 (opinion of \*333 SCALIA, J.). The controlling opinion in *WRTL*, which refrained from holding the statute invalid except as applied to the facts then before the Court, was a careful attempt to accept the essential elements of the Court’s opinion in *McConnell*, while vindicating the First Amendment arguments made by the *WRTL* parties. 551 U.S., at 482, 127 S.Ct. 2652 (opinion of ROBERTS, C.J.).

As noted above, Citizens United’s narrower arguments are not sustainable under a fair reading of the statute. In the exercise of its judicial responsibility, it is necessary then for the Court to consider the facial validity of § 441b. Any other course of decision would prolong the substantial, nationwide chilling effect caused by § 441b’s prohibitions on corporate expenditures. Consideration of the facial validity of § 441b is further supported by the following reasons.

First is the uncertainty caused by the litigating position of the Government. As discussed above, see Part II–D, *supra*, the Government suggests, as an alternative argument, that an as-applied challenge might have merit. This argument proceeds on the premise that the nonprofit corporation involved here may have received only *de minimis* donations from for-profit corporations and that some nonprofit corporations may be exempted from the operation of the statute. The Government also suggests that an as-applied challenge to § 441b’s ban on books may be successful, although it would defend § 441b’s ban as applied to almost every other form of media \*\*895 including pamphlets. See Tr. of Oral Arg. 65–66 (Sept. 9, 2009). The Government thus, by its own position, contributes to the uncertainty that § 441b causes. When the Government holds out the possibility of ruling for Citizens United on a narrow ground yet refrains from adopting that position, the added uncertainty demonstrates the necessity to address the question of statutory validity.

Second, substantial time would be required to bring clarity to the application of the statutory provision on these points \*334 in order to avoid any chilling effect caused by some improper interpretation. See Part II–C, *supra*. It is well known that the public begins to concentrate on elections only in the weeks immediately before they are held. There are short timeframes in which speech can have influence. The need or relevance of the speech will often first be apparent at this stage in the campaign. The decision to speak is made in the heat of political campaigns, when speakers react to messages conveyed by others. A speaker's ability to engage in political speech that could have a chance of persuading voters is stifled if the speaker must first commence a protracted lawsuit. By the time the lawsuit concludes, the election will be over and the litigants in most cases will have neither the incentive nor, perhaps, the resources to carry on, even if they could establish that the case is not moot because the issue is “capable of repetition, yet evading review.” *WRTL, supra*, at 462, 126 S.Ct. 1016 (opinion of ROBERTS, C.J.) (citing *Los Angeles v. Lyons*, 461 U.S. 95, 109, 103 S.Ct. 1660, 75 L.Ed.2d 675 (1983); *Southern Pacific Terminal Co. v. ICC*, 219 U.S. 498, 515, 31 S.Ct. 279, 55 L.Ed. 310 (1911)). Here, Citizens United decided to litigate its case to the end. Today, Citizens United finally learns, two years after the fact, whether it could have spoken during the 2008 Presidential primary—long after the opportunity to persuade primary voters has passed.

Third is the primary importance of speech itself to the integrity of the election process. As additional rules are created for regulating political speech, any speech arguably within their reach is chilled. See Part II–A, *supra*. Campaign finance regulations now impose “unique and complex rules” on “71 distinct entities.” Brief for Seven Former Chairmen of FEC et al. as *Amici Curiae* 11–12. These entities are subject to separate rules for 33 different types of political speech. *Id.*, at 14–15, n. 10. The FEC has adopted 568 pages of regulations, 1,278 pages of explanations and justifications for those regulations, and 1,771 advisory opinions since 1975. See *id.*, at 6, n. 7. In fact, after this Court in \*335 *WRTL* adopted an objective “appeal to vote” test for determining whether a communication was the functional equivalent of express advocacy, 551 U.S., at 470, 127 S.Ct. 2652 (opinion of ROBERTS, C. J.), the FEC adopted a two-part, 11-factor balancing test to implement *WRTL*’s ruling. See 11 CFR § 114.15; Brief for Wyoming Liberty Group et al. as *Amici Curiae* 17–27 (filed Jan. 15, 2009).

This regulatory scheme may not be a prior restraint on speech in the strict sense of that term, for prospective speakers are

not compelled by law to seek an advisory opinion from the FEC before the speech takes place. Cf. *Near v. Minnesota ex rel. Olson*, 283 U.S. 697, 712–713, 51 S.Ct. 625, 75 L.Ed. 1357 (1931). As a practical matter, however, given the complexity of the regulations and the deference courts show to administrative determinations, a speaker who wants to avoid threats of criminal liability and the heavy costs of defending against FEC enforcement must ask a governmental agency for prior permission to speak. See 2 U.S.C. § 437f; 11 CFR § 112.1. These onerous \*\*896 restrictions thus function as the equivalent of prior restraint by giving the FEC power analogous to licensing laws implemented in 16th- and 17th-century England, laws and governmental practices of the sort that the First Amendment was drawn to prohibit. See *Thomas v. Chicago Park Dist.*, 534 U.S. 316, 320, 122 S.Ct. 775, 151 L.Ed.2d 783 (2002); *Lovell v. City of Griffin*, 303 U.S. 444, 451–452, 58 S.Ct. 666, 82 L.Ed. 949 (1938); *Near, supra*, at 713–714, 51 S.Ct. 625. Because the FEC’s “business is to censor, there inheres the danger that [it] may well be less responsive than a court—part of an independent branch of government—to the constitutionally protected interests in free expression.” *Freedman v. Maryland*, 380 U.S. 51, 57–58, 85 S.Ct. 734, 13 L.Ed.2d 649 (1965). When the FEC issues advisory opinions that prohibit speech, “[m]any persons, rather than undertake the considerable burden (and sometimes risk) of vindicating their rights through case-by-case litigation, will choose simply to abstain from protected speech—harming not only themselves but society as a whole, which is deprived of an uninhibited marketplace of ideas.” \*336 *Virginia v. Hicks*, 539 U.S. 113, 119, 123 S.Ct. 2191, 156 L.Ed.2d 148 (2003) (citation omitted). Consequently, “the censor’s determination may in practice be final.” *Freedman, supra*, at 58, 85 S.Ct. 734.

This is precisely what *WRTL* sought to avoid. *WRTL* said that First Amendment standards “must eschew ‘the open-ended rough-and-tumble of factors,’ which ‘invit[es] complex argument in a trial court and a virtually inevitable appeal.’” 551 U.S., at 469, 127 S.Ct. 2652 (opinion of ROBERTS, C.J.) (quoting *Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.*, 513 U.S. 527, 547, 115 S.Ct. 1043, 130 L.Ed.2d 1024 (1995); alteration in original). Yet, the FEC has created a regime that allows it to select what political speech is safe for public consumption by applying ambiguous tests. If parties want to avoid litigation and the possibility of civil and criminal penalties, they must either refrain from speaking or ask the FEC to issue an advisory opinion approving of the political speech in question. Government officials pore over



each word of a text to see if, in their judgment, it accords with the 11-factor test they have promulgated. This is an unprecedented governmental intervention into the realm of speech.

The ongoing chill upon speech that is beyond all doubt protected makes it necessary in this case to invoke the earlier precedents that a statute which chills speech can and must be invalidated where its facial invalidity has been demonstrated. See *WRTL*, *supra*, at 482–483, 127 S.Ct. 2652 (ALITO, J., concurring); *Thornhill v. Alabama*, 310 U.S. 88, 97–98, 60 S.Ct. 736, 84 L.Ed. 1093 (1940). For these reasons we find it necessary to reconsider *Austin*.

### III

The First Amendment provides that “Congress shall make no law ... abridging the freedom of speech.” Laws enacted to control or suppress speech may operate at different points in the speech process. The following are just a few examples of restrictions that have been attempted at different stages of the speech process—all laws found to be invalid: restrictions requiring a permit at the outset, *Watchtower \*337 Bible & Tract Soc. of N.Y., Inc. v. Village of Stratton*, 536 U.S. 150, 153, 122 S.Ct. 2080, 153 L.Ed.2d 205 (2002); imposing a burden by impounding proceeds on receipts or royalties, *Simon & Schuster, Inc. v. Members of N.Y. State Crime Victims Bd.*, 502 U.S. 105, 108, 123, 112 S.Ct. 501, 116 L.Ed.2d 476 (1991); seeking to exact a cost after the speech occurs, *New York Times Co. v. Sullivan*, 376 U.S., at 267, 84 S.Ct. 710; and subjecting the \*\*897 speaker to criminal penalties, *Brandenburg v. Ohio*, 395 U.S. 444, 445, 89 S.Ct. 1827, 23 L.Ed.2d 430 (1969) (*per curiam*).

The law before us is an outright ban, backed by criminal sanctions. Section 441b makes it a felony for all corporations—including nonprofit advocacy corporations—either to expressly advocate the election or defeat of candidates or to broadcast electioneering communications within 30 days of a primary election and 60 days of a general election. Thus, the following acts would all be felonies under § 441b: The Sierra Club runs an ad, within the crucial phase of 60 days before the general election, that exhorts the public to disapprove of a Congressman who favors logging in national forests; the National Rifle Association publishes a book urging the public to vote for the challenger because the incumbent U.S. Senator supports a handgun ban; and the American Civil Liberties Union creates a Web site telling the public to vote

for a Presidential candidate in light of that candidate's defense of free speech. These prohibitions are classic examples of censorship.

Section 441b is a ban on corporate speech notwithstanding the fact that a PAC created by a corporation can still speak. See *McConnell*, 540 U.S., at 330–333, 124 S.Ct. 619 (opinion of KENNEDY, J.). A PAC is a separate association from the corporation. So the PAC exemption from § 441b's expenditure ban, § 441b(b)(2), does not allow corporations to speak. Even if a PAC could somehow allow a corporation to speak—and it does not—the option to form PACs does not alleviate the First Amendment problems with § 441b. PACs are burdensome alternatives; they are expensive to administer and subject to extensive regulations. For example, every PAC \*338 must appoint a treasurer, forward donations to the treasurer promptly, keep detailed records of the identities of the persons making donations, preserve receipts for three years, and file an organization statement and report changes to this information within 10 days. See *id.*, at 330–332, 124 S.Ct. 619 (quoting *MCFL*, 479 U.S., at 253–254, 107 S.Ct. 616 (opinion of Brennan, J.)).

And that is just the beginning. PACs must file detailed monthly reports with the FEC, which are due at different times depending on the type of election that is about to occur:

“ ‘These reports must contain information regarding the amount of cash on hand; the total amount of receipts, detailed by 10 different categories; the identification of each political committee and candidate's authorized or affiliated committee making contributions, and any persons making loans, providing rebates, refunds, dividends, or interest or any other offset to operating expenditures in an aggregate amount over \$200; the total amount of all disbursements, detailed by 12 different categories; the names of all authorized or affiliated committees to whom expenditures aggregating over \$200 have been made; persons to whom loan repayments or refunds have been made; the total sum of all contributions, operating expenses, outstanding debts and obligations, and the settlement terms of the retirement of any debt or obligation.’ ” 540 U.S., at 331–332, 124 S.Ct. 619 (quoting *MCFL*, *supra*, at 253–254, 107 S.Ct. 616).

PACs have to comply with these regulations just to speak. This might explain why fewer than 2,000 of the millions of corporations in this country have PACs. See Brief for Seven Former Chairmen of FEC et al. as *Amici Curiae* 11 (citing FEC, Summary of PAC Activity 1990–2006, online at <http://www.fec.gov/press/press2007/20071009pac/>

sumhistory.pdf (as visited Jan. 18, 2010, and available in Clerk \*\*898 of Court's case file)); IRS, Statistics of Income: 2006, Corporation Income \*339 Tax Returns 2 (2009) (hereinafter Statistics of Income) (5.8 million for-profit corporations filed 2006 tax returns). PACs, furthermore, must exist before they can speak. Given the onerous restrictions, a corporation may not be able to establish a PAC in time to make its views known regarding candidates and issues in a current campaign.

Section 441b's prohibition on corporate independent expenditures is thus a ban on speech. As a "restriction on the amount of money a person or group can spend on political communication during a campaign," that statute "necessarily reduces the quantity of expression by restricting the number of issues discussed, the depth of their exploration, and the size of the audience reached." *Buckley v. Valeo*, 424 U.S. 1, 19, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976) (*per curiam*). Were the Court to uphold these restrictions, the Government could repress speech by silencing certain voices at any of the various points in the speech process. See *McConnell*, *supra*, at 251, 124 S.Ct. 619 (opinion of SCALIA, J.) (Government could repress speech by "attacking all levels of the production and dissemination of ideas," for "effective public communication requires the speaker to make use of the services of others"). If § 441b applied to individuals, no one would believe that it is merely a time, place, or manner restriction on speech. Its purpose and effect are to silence entities whose voices the Government deems to be suspect.

[11] Speech is an essential mechanism of democracy, for it is the means to hold officials accountable to the people. See *Buckley*, *supra*, at 14–15, 96 S.Ct. 612 ("In a republic where the people are sovereign, the ability of the citizenry to make informed choices among candidates for office is essential"). The right of citizens to inquire, to hear, to speak, and to use information to reach consensus is a precondition to enlightened self-government and a necessary means to protect it. The First Amendment "'has its fullest and most urgent application' to speech uttered during a campaign for political office." \*340 *Eu v. San Francisco County Democratic Central Comm.*, 489 U.S. 214, 223, 109 S.Ct. 1013, 103 L.Ed.2d 271 (1989) (quoting *Monitor Patriot Co. v. Roy*, 401 U.S. 265, 272, 91 S.Ct. 621, 28 L.Ed.2d 35 (1971)); see *Buckley*, *supra*, at 14, 96 S.Ct. 612 ("Discussion of public issues and debate on the qualifications of candidates are integral to the operation of the system of government established by our Constitution").

[12] For these reasons, political speech must prevail against laws that would suppress it, whether by design or inadvertence. Laws that burden political speech are "subject to strict scrutiny," which requires the Government to prove that the restriction "furthers a compelling interest and is narrowly tailored to achieve that interest." *WRTL*, 551 U.S., at 464, 127 S.Ct. 2652 (opinion of ROBERTS, C.J.). While it might be maintained that political speech simply cannot be banned or restricted as a categorical matter, see *Simon & Schuster*, 502 U.S., at 124, 112 S.Ct. 501 (KENNEDY, J., concurring in judgment), the quoted language from *WRTL* provides a sufficient framework for protecting the relevant First Amendment interests in this case. We shall employ it here.

[13] Premised on mistrust of governmental power, the First Amendment stands against attempts to disfavor certain subjects or viewpoints. See, e.g., *United States v. Playboy Entertainment Group, Inc.*, 529 U.S. 803, 813, 120 S.Ct. 1878, 146 L.Ed.2d 865 (2000) (striking down content-based restriction). Prohibited, too, are restrictions distinguishing among different speakers, allowing speech by some but not others. See *First Nat. Bank of Boston v. Bellotti*, 435 U.S. 765, 784, 98 S.Ct. 1407, 55 L.Ed.2d 707 (1978). As instruments to censor, these categories are interrelated: Speech restrictions based on the identity of the speaker are all too often simply a means to control content.

Quite apart from the purpose or effect of regulating content, moreover, the Government may commit a constitutional wrong when by law it identifies certain preferred speakers. By taking the right to speak from some and giving it to others, the Government deprives the disadvantaged person or class of the right to use speech to strive to establish worth, \*341 standing, and respect for the speaker's voice. The Government may not by these means deprive the public of the right and privilege to determine for itself what speech and speakers are worthy of consideration. The First Amendment protects speech and speaker, and the ideas that flow from each.

The Court has upheld a narrow class of speech restrictions that operate to the disadvantage of certain persons, but these rulings were based on an interest in allowing governmental entities to perform their functions. See, e.g., *Bethel School Dist. No. 403 v. Fraser*, 478 U.S. 675, 683, 106 S.Ct. 3159, 92 L.Ed.2d 549 (1986) (protecting the "function of public school education"); *Jones v. North Carolina Prisoners' Labor Union, Inc.*, 433 U.S. 119, 129, 97 S.Ct. 2532, 53 L.Ed.2d 629 (1977) (furthering "the legitimate penological objectives of



the corrections system” (internal quotation marks omitted)); *Parker v. Levy*, 417 U.S. 733, 759, 94 S.Ct. 2547, 41 L.Ed.2d 439 (1974) (ensuring “the capacity of the Government to discharge its [military] responsibilities” (internal quotation marks omitted)); *Civil Service Comm’n v. Letter Carriers*, 413 U.S. 548, 557, 93 S.Ct. 2880, 37 L.Ed.2d 796 (1973) (“[F]ederal service should depend upon meritorious performance rather than political service”). The corporate independent expenditures at issue in this case, however, would not interfere with governmental functions, so these cases are inapposite. These precedents stand only for the proposition that there are certain governmental functions that cannot operate without some restrictions on particular kinds of speech. By contrast, it is inherent in the nature of the political process that voters must be free to obtain information from diverse sources in order to determine how to cast their votes. At least before *Austin*, the Court had not allowed the exclusion of a class of speakers from the general public dialogue.

We find no basis for the proposition that, in the context of political speech, the Government may impose restrictions on certain disfavored speakers. Both history and logic lead us to this conclusion.

\*342 A

I

The Court has recognized that First Amendment protection extends to corporations. *Bellotti, supra*, at 778, n. 14, 98 S.Ct. 1407 (citing *Linmark Associates, Inc. v. Willingboro*, 431 U.S. 85, 97 S.Ct. 1614, 52 L.Ed.2d 155 (1977); *Time, Inc. v. Firestone*, 424 U.S. 448, 96 S.Ct. 958, 47 L.Ed.2d 154 (1976); *Doran v. Salem Inn, Inc.*, 422 U.S. 922, 95 S.Ct. 2561, 45 L.Ed.2d 648 (1975); *Southeastern Promotions, Ltd. v. Conrad*, 420 U.S. 546, 95 S.Ct. 1239, 43 L.Ed.2d 448 (1975); *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 95 S.Ct. 1029, 43 L.Ed.2d 328 (1975); *Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241, 94 S.Ct. 2831, 41 L.Ed.2d 730 (1974); *New York Times Co. v. United States*, 403 U.S. 713, 91 S.Ct. 2140, 29 L.Ed.2d 822 (1971) (*per curiam*); *Time, Inc. v. Hill*, 385 U.S. 374, 87 S.Ct. 534, 17 L.Ed.2d 456 (1967); *New York Times Co. v. Sullivan*, 376 U.S. 254, 84 S.Ct. 710, 11 L.Ed.2d 686; *Kingsley Int’l Pictures Corp. v. Regents of Univ. of N. Y.*, 360 U.S. 684, 79 S.Ct. 1362, 3 L.Ed.2d 1512 (1959); *Joseph Burstyn, Inc. v. Wilson*, 343 U.S. 495, 72 S.Ct. 777, 96 L.Ed. 1098 (1952)); see, e.g., *Turner Broadcasting System,*

*Inc. v. FCC*, 520 U.S. 180, 117 S.Ct. 1174, 137 L.Ed.2d 369 (1997); *Denver Area Ed. Telecommunications Consortium, Inc. v. FCC*, 518 U.S. 727, 116 S.Ct. 2374, 135 L.Ed.2d 888 (1996); *Turner*, 512 U.S. 622, 114 S.Ct. 2445, 129 L.Ed.2d 497; *Simon & Schuster*, 502 U.S. 105, 112 S.Ct. 501, 116 L.Ed.2d 476; *Sable Communications of Cal., Inc. v. FCC*, 492 U.S. 115, 109 S.Ct. 2829, 106 L.Ed.2d 93 (1989); *Florida Star v. B.J. F.*, 491 U.S. 524, 109 S.Ct. 2603, 105 L.Ed.2d 443 (1989); *Philadelphia Newspapers, Inc. v. Hepps*, 475 U.S. 767, 106 S.Ct. 1558, 89 L.Ed.2d 783 (1986); *Landmark Communications, Inc. v. Virginia*, 435 U.S. 829, 98 S.Ct. 1535, 56 L.Ed.2d 1 (1978); *Young v. American Mini Theatres, Inc.*, 427 U.S. 50, 96 S.Ct. 2440, 49 L.Ed.2d 310 (1976); *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 94 S.Ct. 2997, 41 L.Ed.2d 789 (1974); *Greenbelt Cooperative Publishing Assn., Inc. v. Bresler*, 398 U.S. 6, 90 S.Ct. 1537, 26 L.Ed.2d 6 (1970).

[14] This protection has been extended by explicit holdings to the context of political speech. See, e.g., *Button*, 371 U.S., at 428–429, 83 S.Ct. 328; *Grosjean v. American Press Co.*, 297 U.S. 233, 244, 56 S.Ct. 444, 80 L.Ed. 660 (1936). Under the rationale of these precedents, political speech does not lose First Amendment protection “simply because its source is a corporation.” *Bellotti, supra*, at 784, 98 S.Ct. 1407; see *Pacific Gas & Elec. Co. v. Public Util. Comm’n of Cal.*, 475 U.S. 1, 8, 106 S.Ct. 903, 89 L.Ed.2d 1 (1986) (plurality opinion) (“The identity of the speaker is not decisive in determining whether speech is protected. \*343 Corporations and other associations, like individuals, contribute to the ‘discussion, debate, and the dissemination of information and ideas’ that the First Amendment seeks to foster” (quoting *Bellotti*, 435 U.S., at 783, 98 S.Ct. 1407)). The Court has thus rejected the argument that political speech of corporations or other associations should be treated differently under the First Amendment simply because such associations are not “natural persons.” *Id.*, at 776, 98 S.Ct. 1407; see *id.*, at 780, n. 16, 98 S.Ct. 1407. Cf. *id.*, at 828, 98 S.Ct. 1407 (Rehnquist, J., dissenting).

At least since the latter part of the 19th century, the laws of some States and of the United States imposed a ban on corporate direct contributions to candidates. See B. Smith, *Unfree Speech: The Folly of Campaign Finance Reform* 23 (2001). Yet not until 1947 did Congress first prohibit independent expenditures by corporations and labor unions in § 304 of the Labor Management Relations Act, 1947, 61 Stat. 159 (codified at 2 U.S.C. § 251 (1946 ed., Supp. I)). In passing this Act Congress overrode the veto of President Truman, who warned that the expenditure ban was a “dangerous intrusion

on free speech.” Message from the President of the United States, H.R. Doc. No. 334, 80th Cong., 1st Sess., 9 (1947).

For almost three decades thereafter, the Court did not reach the question whether restrictions on corporate and union expenditures are constitutional. See *WRTL*, 551 U.S., at 502, 127 S.Ct. 2652 (opinion of SCALIA, J.). The question was in the background of *United States v. CIO*, 335 U.S. 106, 68 S.Ct. 1349, 92 L.Ed. 1849 (1948). There, a labor union endorsed a congressional candidate in its weekly periodical. The Court stated that “the gravest doubt would arise in our minds as to [the federal expenditure prohibition’s] constitutionality” if it were construed to suppress that writing. *Id.*, at 121, 68 S.Ct. 1349. The Court engaged in statutory interpretation \*\*901 and found the statute did not cover the publication. *Id.*, at 121–122, and n. 20, 68 S.Ct. 1349. Four Justices, however, said they would reach the constitutional question and invalidate the Labor-Management Relations Act’s expenditure \*344 ban. *Id.*, at 155, 68 S.Ct. 1349 (Rutledge, J., joined by Black, Douglas, and Murphy, JJ., concurring in result). The concurrence explained that any “ ‘undue influence’ ” generated by a speaker’s “large expenditures” was outweighed “by the loss for democratic processes resulting from the restrictions upon free and full public discussion.” *Id.*, at 143, 68 S.Ct. 1349.

In *United States v. Automobile Workers*, 352 U.S. 567, 77 S.Ct. 529, 1 L.Ed.2d 563 (1957), the Court again encountered the independent expenditure ban, which had been recodified at 18 U.S.C. § 610 (1952 ed.). See 62 Stat. 723–724. After holding only that a union television broadcast that endorsed candidates was covered by the statute, the Court “[r]efus[ed] to anticipate constitutional questions” and remanded for the trial to proceed. 352 U.S., at 591, 77 S.Ct. 529. Three Justices dissented, arguing that the Court should have reached the constitutional question and that the ban on independent expenditures was unconstitutional:

“Under our Constitution it is We The People who are sovereign. The people have the final say. The legislators are their spokesmen. The people determine through their votes the destiny of the nation. It is therefore important—vitally important—that all channels of communication be open to them during every election, that no point of view be restrained or barred, and that the people have access to the views of every group in the community.” *Id.*, at 593, 77 S.Ct. 529 (opinion of Douglas, J., joined by Warren, C.J., and Black, J.).

The dissent concluded that deeming a particular group “too powerful” was not a “justificatio[n] for withholding First

Amendment rights from any group—labor or corporate.” *Id.*, at 597, 77 S.Ct. 529. The Court did not get another opportunity to consider the constitutional question in that case; for after a remand, a jury found the defendants not guilty. See Hayward, Revisiting the Fable of Reform, 45 Harv. J. Legis. 421, 463 (2008).

Later, in *Pipefitters v. United States*, 407 U.S. 385, 400–401, 92 S.Ct. 2247, 33 L.Ed.2d 11 (1972), the Court reversed a conviction for expenditure of union funds for political speech—again without reaching the constitutional question. The Court would not resolve that question for another four years.

2

In *Buckley*, 424 U.S. 1, 96 S.Ct. 612, 46 L.Ed.2d 659, the Court addressed various challenges to the Federal Election Campaign Act of 1971 (FECA) as amended in 1974. These amendments created 18 U.S.C. § 608(e) (1970 ed., Supp. V), see 88 Stat. 1265, an independent expenditure ban separate from § 610 that applied to individuals as well as corporations and labor unions. *Buckley*, 424 U.S., at 23, 39, and n. 45, 96 S.Ct. 612.

Before addressing the constitutionality of § 608(e)’s independent expenditure ban, *Buckley* first upheld § 608(b), FECA’s limits on direct contributions to candidates. The *Buckley* Court recognized a “sufficiently important” governmental interest in “the prevention of corruption and the appearance of corruption.” *Id.*, at 25, 96 S.Ct. 612; see *id.*, at 26, 96 S.Ct. 612. This followed from the Court’s concern that large contributions could be given “to secure a political *quid pro quo*.” *Ibid.*

The *Buckley* Court explained that the potential for *quid pro quo* corruption distinguished \*\*902 direct contributions to candidates from independent expenditures. The Court emphasized that “the independent expenditure ceiling ... fails to serve any substantial governmental interest in stemming the reality or appearance of corruption in the electoral process,” *id.*, at 47–48, 96 S.Ct. 612, because “[t]he absence of prearrangement and coordination ... alleviates the danger that expenditures will be given as a *quid pro quo* for improper commitments from the candidate,” *id.*, at 47, 96 S.Ct. 612. *Buckley* invalidated § 608(e)’s restrictions on independent expenditures, with only one Justice dissenting. See *Federal Election Comm’n v. National Conservative Political Action*

*Comm.*, 470 U.S. 480, 491, 105 S.Ct. 1459, 84 L.Ed.2d 455, n. 3 (1985) (*NCPAC*).

\*346. *Buckley* did not consider § 610's separate ban on corporate and union independent expenditures, the prohibition that had also been in the background in *CIO, Automobile Workers*, and *Pipefitters*. Had § 610 been challenged in the wake of *Buckley*, however, it could not have been squared with the reasoning and analysis of that precedent. See *WRTL*, 551 U.S., at 487, 127 S.Ct. 2652 (opinion of SCALIA, J.) ("*Buckley* might well have been the last word on limitations on independent expenditures"); *Austin*, 494 U.S., at 683, 110 S.Ct. 1391 (SCALIA, J., dissenting). The expenditure ban invalidated in *Buckley*, § 608(e), applied to corporations and unions, 424 U.S., at 23, 39, n. 45, 96 S.Ct. 612; and some of the prevailing plaintiffs in *Buckley* were corporations, *id.*, at 8., 96 S.Ct. 612. The *Buckley* Court did not invoke the First Amendment's overbreadth doctrine, see *Broadrick v. Oklahoma*, 413 U.S. 601, 615, 93 S.Ct. 2908, 37 L.Ed.2d 830 (1973), to suggest that § 608(e)'s expenditure ban would have been constitutional if it had applied only to corporations and not to individuals, 424 U.S., at 50, 96 S.Ct. 612. *Buckley* cited with approval the *Automobile Workers* dissent, which argued that § 610 was unconstitutional. 424 U.S., at 43, 96 S.Ct. 612 (citing 352 U.S., at 595–596, 77 S.Ct. 529 (opinion of Douglas, J.)).

Notwithstanding this precedent, Congress recodified § 610's corporate and union expenditure ban at 2 U.S.C. § 441b four months after *Buckley* was decided. See 90 Stat. 490. Section 441b is the independent expenditure restriction challenged here.

Less than two years after *Buckley*, *Bellotti*, 435 U.S. 765, 98 S.Ct. 1407, 55 L.Ed.2d 707, reaffirmed the First Amendment principle that the Government cannot restrict political speech based on the speaker's corporate identity. *Bellotti* could not have been clearer when it struck down a state-law prohibition on corporate independent expenditures related to referenda issues:

"We thus find no support in the First ... Amendment, or in the decisions of this Court, for the proposition that speech that otherwise would be within the protection of the First Amendment loses that protection simply because  
\*347 its source is a corporation that cannot prove, to the satisfaction of a court, a material effect on its business or property.... [That proposition] amounts to an impermissible legislative prohibition of speech based on the identity of the interests that spokesmen may represent in public debate

over controversial issues and a requirement that the speaker have a sufficiently great interest in the subject to justify communication.

\* \* \* \* \*

"In the realm of protected speech, the legislature is constitutionally disqualified from dictating the subjects about which persons may speak and the speakers who may address a public issue." *Id.*, at 784–785, 98 S.Ct. 1407.

\*903 It is important to note that the reasoning and holding of *Bellotti* did not rest on the existence of a viewpoint-discriminatory statute. It rested on the principle that the Government lacks the power to ban corporations from speaking.

*Bellotti* did not address the constitutionality of the State's ban on corporate independent expenditures to support candidates. In our view, however, that restriction would have been unconstitutional under *Bellotti*'s central principle: that the First Amendment does not allow political speech restrictions based on a speaker's corporate identity. See *ibid.*

3

Thus the law stood until *Austin*. *Austin* "uph[eld] a direct restriction on the independent expenditure of funds for political speech for the first time in [this Court's] history." 494 U.S., at 695, 110 S.Ct. 1391 (KENNEDY, J., dissenting). There, the Michigan Chamber of Commerce sought to use general treasury funds to run a newspaper ad supporting a specific candidate. Michigan law, however, prohibited corporate independent expenditures that supported or opposed any candidate for state office. A violation of the law was punishable as a felony. The Court sustained the speech prohibition.

\*348 To bypass *Buckley* and *Bellotti*, the *Austin* Court identified a new governmental interest in limiting political speech: an antidistortion interest. *Austin* found a compelling governmental interest in preventing "the corrosive and distorting effects of immense aggregations of wealth that are accumulated with the help of the corporate form and that have little or no correlation to the public's support for the corporation's political ideas." 494 U.S., at 660, 110 S.Ct. 1391; see *id.*, at 659, 110 S.Ct. 1391 (citing *MCFL*, 479 U.S., at 257, 107 S.Ct. 616; *NCPAC*, 470 U.S., at 500–501, 105 S.Ct. 1459).

B

The Court is thus confronted with conflicting lines of precedent: a pre-*Austin* line that forbids restrictions on political speech based on the speaker's corporate identity and a post-*Austin* line that permits them. No case before *Austin* had held that Congress could prohibit independent expenditures for political speech based on the speaker's corporate identity. Before *Austin*, Congress had enacted legislation for this purpose, and the Government urged the same proposition before this Court. See *MCFL*, *supra*, at 257, 107 S.Ct. 616 (FEC posited that Congress intended to "curb the political influence of 'those who exercise control over large aggregations of capital' " (quoting *Automobile Workers*, 352 U.S., at 585, 77 S.Ct. 529)); *California Medical Assn. v. Federal Election Comm'n*, 453 U.S. 182, 201, 101 S.Ct. 2712, 69 L.Ed.2d 567 (1981) (Congress believed that "differing structures and purposes" of corporations and unions "may require different forms of regulation in order to protect the integrity of the electoral process"). In neither of these cases did the Court adopt the proposition.

In its defense of the corporate-speech restrictions in § 441b, the Government notes the antidistortion rationale on which *Austin* and its progeny rest in part, yet it all but abandons reliance upon it. It argues instead that two other compelling interests support *Austin*'s holding that corporate expenditure restrictions are constitutional: an anticorruption interest, see 494 U.S., at 678, 110 S.Ct. 1391 (STEVENS, J., concurring), and a \*349 shareholder-protection interest, see *id.*, at 674–675, 110 S.Ct. 1391 (Brennan, J., \*\*904 concurring). We consider the three points in turn.

I

As for *Austin*'s antidistortion rationale, the Government does little to defend it. See Tr. of Oral Arg. 45–48 (Sept. 9, 2009). And with good reason, for the rationale cannot support § 441b.

If the First Amendment has any force, it prohibits Congress from fining or jailing citizens, or associations of citizens, for simply engaging in political speech. If the antidistortion rationale were to be accepted, however, it would permit Government to ban political speech simply because the speaker is an association that has taken on the corporate

form. The Government contends that *Austin* permits it to ban corporate expenditures for almost all forms of communication stemming from a corporation. See Part II–E, *supra*; Tr. of Oral Arg. 66 (Sept. 9, 2009); see also *id.*, at 26–31 (Mar. 24, 2009). If *Austin* were correct, the Government could prohibit a corporation from expressing political views in media beyond those presented here, such as by printing books. The Government responds "that the FEC has never applied this statute to a book," and if it did, "there would be quite [a] good as-applied challenge." Tr. of Oral Arg. 65 (Sept. 9, 2009). This troubling assertion of brooding governmental power cannot be reconciled with the confidence and stability in civic discourse that the First Amendment must secure.

Political speech is "indispensable to decisionmaking in a democracy, and this is no less true because the speech comes from a corporation rather than an individual." *Bellotti*, 435 U.S., at 777, 98 S.Ct. 1407 (footnote omitted); see *ibid.* (the worth of speech "does not depend upon the identity of its source, whether corporation, association, union, or individual"); *Buckley*, 424 U.S., at 48–49, 96 S.Ct. 612 ("[T]he concept that government may restrict the speech of some elements of our society in order to enhance \*350 the relative voice of others is wholly foreign to the First Amendment"); *Automobile Workers*, *supra*, at 597, 77 S.Ct. 529 (Douglas, J., dissenting); *CIO*, 335 U.S., at 154–155, 68 S.Ct. 1349 (Rutledge, J., concurring in result). This protection for speech is inconsistent with *Austin*'s antidistortion rationale. *Austin* sought to defend the antidistortion rationale as a means to prevent corporations from obtaining " 'an unfair advantage in the political marketplace' " by using " 'resources amassed in the economic marketplace.' " 494 U.S., at 659, 110 S.Ct. 1391 (quoting *MCFL*, *supra*, at 257, 107 S.Ct. 616). But *Buckley* rejected the premise that the Government has an interest "in equalizing the relative ability of individuals and groups to influence the outcome of elections." 424 U.S., at 48, 96 S.Ct. 612; see *Bellotti*, *supra*, at 791, n. 30, 98 S.Ct. 1407. *Buckley* was specific in stating that "the skyrocketing cost of political campaigns" could not sustain the governmental prohibition. 424 U.S., at 26, 96 S.Ct. 612. The First Amendment's protections do not depend on the speaker's "financial ability to engage in public discussion." *Id.*, at 49, 96 S.Ct. 612.

The Court reaffirmed these conclusions when it invalidated the BCRA provision that increased the cap on contributions to one candidate if the opponent made certain expenditures from personal funds. See *Davis v. Federal Election Comm'n*, 554 U.S. 724, 742, 128 S.Ct. 2759, 2774, 171 L.Ed.2d 737



(2008) (“Leveling electoral opportunities means making and implementing judgments about which strengths should be permitted to contribute to the outcome of an election. The Constitution, however, confers upon voters, not Congress, the power to choose the Members of the House of Representatives, Art. I, § 2, and it is a dangerous business for Congress to use the election laws to influence the voters’ choices”). The rule that political speech cannot be limited based on a speaker’s wealth is a necessary consequence of the premise that the First Amendment generally prohibits the suppression of political speech based on the speaker’s identity.

Either as support for its antidistortion rationale or as a further argument, the *Austin* majority undertook to distinguish wealthy individuals from corporations on the ground that “[s]tate law grants corporations special advantages—such as limited liability, perpetual life, and favorable treatment of the accumulation and distribution of assets.” 494 U.S., at 658–659, 110 S.Ct. 1391. This does not suffice, however, to allow laws prohibiting speech. “It is rudimentary that the State cannot exact as the price of those special advantages the forfeiture of First Amendment rights.” *Id.*, at 680, 110 S.Ct. 1391 (SCALIA, J., dissenting).

It is irrelevant for purposes of the First Amendment that corporate funds may “have little or no correlation to the public’s support for the corporation’s political ideas.” *Id.*, at 660, 110 S.Ct. 1391 (majority opinion). All speakers, including individuals and the media, use money amassed from the economic marketplace to fund their speech. The First Amendment protects the resulting speech, even if it was enabled by economic transactions with persons or entities who disagree with the speaker’s ideas. See *id.*, at 707, 110 S.Ct. 1391 (KENNEDY, J., dissenting) (“Many persons can trace their funds to corporations, if not in the form of donations, then in the form of dividends, interest, or salary”).

*Austin*’s antidistortion rationale would produce the dangerous, and unacceptable, consequence that Congress could ban political speech of media corporations. See *McConnell*, 540 U.S., at 283, 124 S.Ct. 619 (opinion of THOMAS, J.) (“The chilling endpoint of the Court’s reasoning is not difficult to foresee: outright regulation of the press”). Cf. *Tornillo*, 418 U.S., at 250, 94 S.Ct. 2831 (alleging the existence of “vast accumulations of unreviewable power in the modern media empires”). Media corporations are now exempt from § 441b’s ban on corporate expenditures. See 2 U.S.C. §§ 431(9) (B)(i), 434(f)(3)(B)(i). Yet media corporations accumulate

wealth with the help of the corporate form, the largest media corporations have “immense aggregations of wealth,” and the views expressed by media corporations often “have little or no correlation to the public’s support” for those views. *Austin*, 494 U.S., at 660, 110 S.Ct. 1391. \*352 Thus, under the Government’s reasoning, wealthy media corporations could have their voices diminished to put them on par with other media entities. There is no precedent for permitting this under the First Amendment.

The media exemption discloses further difficulties with the law now under consideration. There is no precedent supporting laws that attempt to distinguish between corporations which are deemed to be exempt as media corporations and those which are not. “We have consistently rejected the proposition that the institutional press has any constitutional privilege beyond that of other speakers.” *Id.*, at 691, 110 S.Ct. 1391 (SCALIA, J., dissenting) (citing *Bellotti*, 435 U.S., at 782, 98 S.Ct. 1407); see *Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc.*, 472 U.S. 749, 784, 105 S.Ct. 2939, 86 L.Ed.2d 593 (1985) (Brennan, J., joined by Marshall, Blackmun, and STEVENS, JJ., dissenting); *id.*, at 773, 105 S.Ct. 2939 (White, J., concurring in judgment). With the advent of the Internet and the decline of print and broadcast media, moreover, the line between the media and others who wish to \*906 comment on political and social issues becomes far more blurred.

The law’s exception for media corporations is, on its own terms, all but an admission of the invalidity of the antidistortion rationale. And the exemption results in a further, separate reason for finding this law invalid: Again by its own terms, the law exempts some corporations but covers others, even though both have the need or the motive to communicate their views. The exemption applies to media corporations owned or controlled by corporations that have diverse and substantial investments and participate in endeavors other than news. So even assuming the most doubtful proposition that a news organization has a right to speak when others do not, the exemption would allow a conglomerate that owns both a media business and an unrelated business to influence or control the media in order to advance its overall business interest. At the same time, some other corporation, with an identical business interest but no media outlet in its ownership structure, would be forbidden to speak or \*353 inform the public about the same issue. This differential treatment cannot be squared with the First Amendment.

There is simply no support for the view that the First Amendment, as originally understood, would permit the suppression of political speech by media corporations. The Framers may not have anticipated modern business and media corporations. See *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 360–361, 115 S.Ct. 1511, 131 L.Ed.2d 426 (1995) (Thomas, J., concurring in judgment). Yet television networks and major newspapers owned by media corporations have become the most important means of mass communication in modern times. The First Amendment was certainly not understood to condone the suppression of political speech in society's most salient media. It was understood as a response to the repression of speech and the press that had existed in England and the heavy taxes on the press that were imposed in the Colonies. See *McConnell*, 540 U.S., at 252–253, 124 S.Ct. 619 (opinion of SCALIA, J.); *Grosjean*, 297 U.S., at 245–248, 56 S.Ct. 444; *Near*, 283 U.S., at 713–714, 51 S.Ct. 625. The great debates between the Federalists and the Anti-Federalists over our founding document were published and expressed in the most important means of mass communication of that era—newspapers owned by individuals. See *McIntyre*, 514 U.S., at 341–343, 115 S.Ct. 1511; *id.*, at 367, 115 S.Ct. 1511 (THOMAS, J., concurring in judgment). At the founding, speech was open, comprehensive, and vital to society's definition of itself; there were no limits on the sources of speech and knowledge. See B. Bailyn, *Ideological Origins of the American Revolution* 5 (1967) (“Any number of people could join in such proliferating polemics, and rebuttals could come from all sides”); G. Wood, *Creation of the American Republic 1776–1787*, p. 6 (1969) (“[I]t is not surprising that the intellectual sources of [the Americans'] Revolutionary thought were profuse and various”). The Framers may have been unaware of certain types of speakers or forms of communication, but that does not mean that those speakers and media are entitled to less First Amendment protection than those types of speakers \*354 and media that provided the means of communicating political ideas when the Bill of Rights was adopted.

*Austin* interferes with the “open marketplace” of ideas protected by the First Amendment. *New York State Bd. of Elections v. Lopez Torres*, 552 U.S. 196, 208, 128 S.Ct. 791, 169 L.Ed.2d 665 (2008); see *ibid.* (ideas “may compete” in this marketplace “without government interference”); *McConnell*, *supra*, at 274, 124 S.Ct. 619 (opinion of THOMAS, J.). It permits the \*\*907 Government to ban the political speech of millions of associations of citizens. See *Statistics of Income* 2 (5.8 million for-profit corporations filed 2006 tax returns). Most of these are small corporations

without large amounts of wealth. See Supp. Brief for Chamber of Commerce of the United States of America as *Amicus Curiae* 1, 3 (96% of the 3 million businesses that belong to the U.S. Chamber of Commerce have fewer than 100 employees); M. Keightley, Congressional Research Service Report for Congress, *Business Organizational Choices: Taxation and Responses to Legislative Changes* 10 (2009) (more than 75% of corporations whose income is taxed under federal law, see 26 U.S.C. § 301, have less than \$1 million in receipts per year). This fact belies the Government's argument that the statute is justified on the ground that it prevents the “distorting effects of immense aggregations of wealth.” *Austin*, 494 U.S., at 660, 110 S.Ct. 1391. It is not even aimed at amassed wealth.

The censorship we now confront is vast in its reach. The Government has “muffle[d] the voices that best represent the most significant segments of the economy.” *McConnell*, *supra*, at 257–258, 124 S.Ct. 619 (opinion of SCALIA, J.). And “the electorate [has been] deprived of information, knowledge and opinion vital to its function.” *CIO*, 335 U.S., at 144, 68 S.Ct. 1349 (Rutledge, J., concurring in result). By suppressing the speech of manifold corporations, both for-profit and nonprofit, the Government prevents their voices and viewpoints from reaching the public and advising voters on which persons or entities are hostile to their interests. Factions will necessarily form in our Republic, but the remedy of “destroying the liberty” of \*355 some factions is “worse than the disease.” The Federalist No. 10, p. 130 (B. Wright ed. 1961) (J. Madison). Factions should be checked by permitting them all to speak, see *ibid.*, and by entrusting the people to judge what is true and what is false.

[15] The purpose and effect of this law is to prevent corporations, including small and nonprofit corporations, from presenting both facts and opinions to the public. This makes *Austin's* antidistortion rationale all the more an aberration. “[T]he First Amendment protects the right of corporations to petition legislative and administrative bodies.” *Bellotti*, 435 U.S., at 792, n. 31, 98 S.Ct. 1407 (citing *California Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508, 510–511, 92 S.Ct. 609, 30 L.Ed.2d 642 (1972); *Eastern Railroad Presidents Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127, 137–138, 81 S.Ct. 523, 5 L.Ed.2d 464 (1961)). Corporate executives and employees counsel Members of Congress and Presidential administrations on many issues, as a matter of routine and often in private. An *amici* brief filed on behalf of Montana and 25 other States notes that lobbying and corporate communications with elected officials occur on a regular basis. Brief for State



of Montana et al. 19. When that phenomenon is coupled with § 441b, the result is that smaller or nonprofit corporations cannot raise a voice to object when other corporations, including those with vast wealth, are cooperating with the Government. That cooperation may sometimes be voluntary, or it may be at the demand of a Government official who uses his or her authority, influence, and power to threaten corporations to support the Government's policies. Those kinds of interactions are often unknown and unseen. The speech that § 441b forbids, though, is public, and all can judge its content and purpose. References to massive corporate treasuries should not mask the real operation \*\*908 of this law. Rhetoric ought not obscure reality.

Even if § 441b's expenditure ban were constitutional, wealthy corporations could still lobby elected officials, although \*356 smaller corporations may not have the resources to do so. And wealthy individuals and unincorporated associations can spend unlimited amounts on independent expenditures. See, e.g., *WRTL*, 551 U.S., at 503–504, 127 S.Ct. 2652 (opinion of SCALIA, J.) (“In the 2004 election cycle, a mere 24 individuals contributed an astounding total of \$142 million to [26 U.S.C. § 527 organizations]”). Yet certain disfavored associations of citizens—those that have taken on the corporate form—are penalized for engaging in the same political speech.

When Government seeks to use its full power, including the criminal law, to command where a person may get his or her information or what distrusted source he or she may not hear, it uses censorship to control thought. This is unlawful. The First Amendment confirms the freedom to think for ourselves.

2

What we have said also shows the invalidity of other arguments made by the Government. For the most part relinquishing the antidistortion rationale, the Government falls back on the argument that corporate political speech can be banned in order to prevent corruption or its appearance. In *Buckley*, the Court found this interest “sufficiently important” to allow limits on contributions but did not extend that reasoning to expenditure limits. 424 U.S., at 25, 96 S.Ct. 612. When *Buckley* examined an expenditure ban, it found “that the governmental interest in preventing corruption and the appearance of corruption [was] inadequate to justify [the ban] on independent expenditures.” *Id.*, at 45, 96 S.Ct. 612.

With regard to large direct contributions, *Buckley* reasoned that they could be given “to secure a political *quid pro quo*,” *id.*, at 26, 96 S.Ct. 612, and that “the scope of such pernicious practices can never be reliably ascertained.” *id.*, at 27, 96 S.Ct. 612. The practices *Buckley* noted would be covered by bribery laws, see, e.g., 18 U.S.C. § 201, if a *quid pro quo* arrangement were proved. See *Buckley*, *supra*, at 27, and n. 28, 96 S.Ct. 612 (citing \*357 *Buckley v. Valeo*, 519 F.2d 821, 839–840, and nn. 36–38 (CA DC 1975) (en banc) (*per curiam*)). The Court, in consequence, has noted that restrictions on direct contributions are preventative, because few if any contributions to candidates will involve *quid pro quo* arrangements. *MCFL*, 479 U.S., at 260, 107 S.Ct. 616; *NCPAC*, 470 U.S., at 500, 105 S.Ct. 1459; *Federal Election Comm’n v. National Right to Work Comm.*, 459 U.S. 197, 210, 103 S.Ct. 552, 74 L.Ed.2d 364 (1982) (*NRWC*). The *Buckley* Court, nevertheless, sustained limits on direct contributions in order to ensure against the reality or appearance of corruption. That case did not extend this rationale to independent expenditures, and the Court does not do so here.

“The absence of prearrangement and coordination of an expenditure with the candidate or his agent not only undermines the value of the expenditure to the candidate, but also alleviates the danger that expenditures will be given as a *quid pro quo* for improper commitments from the candidate.” *Buckley*, 424 U.S., at 47, 96 S.Ct. 612; see *ibid.* (independent expenditures have a “substantially diminished potential for abuse”). Limits on independent expenditures, such as § 441b, have a chilling effect extending well beyond the Government's interest in preventing *quid pro quo* corruption. The anticorruption interest is not sufficient to displace the speech here in question. Indeed, 26 States do not restrict independent expenditures \*\*909 by for-profit corporations. The Government does not claim that these expenditures have corrupted the political process in those States. See Supp. Brief for Appellee 18, n. 3; Supp. Brief for Chamber of Commerce of the United States of America as *Amicus Curiae* 8–9, n. 5.

A single footnote in *Bellotti* purported to leave open the possibility that corporate independent expenditures could be shown to cause corruption. 435 U.S., at 788, n. 26, 98 S.Ct. 1407. For the reasons explained above, we now conclude that independent expenditures, including those made by corporations, do not give rise to corruption or the appearance of corruption. Dicta in *Bellotti*'s footnote suggested that “a corporation's right to speak on issues of general public interest implies no \*358 comparable right

in the quite different context of participation in a political campaign for election to public office.” *Ibid.* Citing the portion of *Buckley* that invalidated the federal independent expenditure ban, 424 U.S., at 46, 96 S.Ct. 612, and a law review student comment, *Bellotti* surmised that “Congress might well be able to demonstrate the existence of a danger of real or apparent corruption in independent expenditures by corporations to influence candidate elections.” 435 U.S., at 788, n. 26, 98 S.Ct. 1407. *Buckley*, however, struck down a ban on independent expenditures to support candidates that covered corporations, 424 U.S., at 23, 39, n. 45, 96 S.Ct. 612, and explained that “the distinction between discussion of issues and candidates and advocacy of election or defeat of candidates may often dissolve in practical application,” *id.*, at 42, 96 S.Ct. 612. *Bellotti*’s dictum is thus supported only by a law review student comment, which misinterpreted *Buckley*. See Comment, The Regulation of Union Political Activity: Majority and Minority Rights and Remedies, 126 U. Pa. L.Rev. 386, 408 (1977) (suggesting that “corporations and labor unions should be held to different and more stringent standards than an individual or other associations under a regulatory scheme for campaign financing”).

Seizing on this aside in *Bellotti*’s footnote, the Court in *NRWC* did say there is a “sufficient” governmental interest in “ensur[ing] that substantial aggregations of wealth amassed” by corporations would not “be used to incur political debts from legislators who are aided by the contributions.” 459 U.S., at 207–208, 103 S.Ct. 552 (citing *Automobile Workers*, 352 U.S., at 579, 77 S.Ct. 529); see 459 U.S., at 210, and n. 7, 103 S.Ct. 552; *NCPAC*, *supra*, at 500–501, 105 S.Ct. 1459 (*NRWC* suggested a governmental interest in restricting “the influence of political war chests funneled through the corporate form”). *NRWC*, however, has little relevance here. *NRWC* decided no more than that a restriction on a corporation’s ability to solicit funds for its segregated PAC, which made direct contributions to candidates, did not violate the \*359 First Amendment. 459 U.S., at 206, 103 S.Ct. 552. *NRWC* thus involved contribution limits, see *NCPAC*, *supra*, at 495–496, 105 S.Ct. 1459, which, unlike limits on independent expenditures, have been an accepted means to prevent *quid pro quo* corruption, see *McConnell*, 540 U.S., at 136–138, and n. 40, 124 S.Ct. 619; *MCFL*, *supra*, at 259–260, 107 S.Ct. 616. *Citizens United* has not made direct contributions to candidates, and it has not suggested that the Court should reconsider whether contribution limits should be subjected to rigorous First Amendment scrutiny.

When *Buckley* identified a sufficiently important governmental interest in preventing corruption or the appearance of corruption, that interest was limited to *quid pro quo* corruption. See *McConnell*, *supra*, at 296–298, 124 S.Ct. 619 (opinion of \*\*910 KENNEDY, J.) (citing *Buckley*, *supra*, at 26–28, 30, 46–48, 96 S.Ct. 612); *NCPAC*, 470 U.S., at 497, 105 S.Ct. 1459 (“The hallmark of corruption is the financial *quid pro quo*: dollars for political favors”); *id.*, at 498, 105 S.Ct. 1459. The fact that speakers may have influence over or access to elected officials does not mean that these officials are corrupt:

“Favoritism and influence are not ... avoidable in representative politics. It is in the nature of an elected representative to favor certain policies, and, by necessary corollary, to favor the voters and contributors who support those policies. It is well understood that a substantial and legitimate reason, if not the only reason, to cast a vote for, or to make a contribution to, one candidate over another is that the candidate will respond by producing those political outcomes the supporter favors. Democracy is premised on responsiveness.” *McConnell*, 540 U.S., at 297, 124 S.Ct. 619 (opinion of KENNEDY, J.).

Reliance on a “generic favoritism or influence theory ... is at odds with standard First Amendment analyses because it is unbounded and susceptible to no limiting principle.” *Id.*, at 296, 124 S.Ct. 619.

\*360 The appearance of influence or access, furthermore, will not cause the electorate to lose faith in our democracy. By definition, an independent expenditure is political speech presented to the electorate that is not coordinated with a candidate. See *Buckley*, *supra*, at 46, 96 S.Ct. 612. The fact that a corporation, or any other speaker, is willing to spend money to try to persuade voters presupposes that the people have the ultimate influence over elected officials. This is inconsistent with any suggestion that the electorate will refuse “to take part in democratic governance” because of additional political speech made by a corporation or any other speaker. *McConnell*, *supra*, at 144, 124 S.Ct. 619 (quoting *Nixon v. Shrink Missouri Government PAC*, 528 U.S. 377, 390, 120 S.Ct. 897, 145 L.Ed.2d 886 (2000)).

*Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 129 S.Ct. 2252, 173 L.Ed.2d 1208 (2009), is not to the contrary. *Caperton* held that a judge was required to recuse himself “when a person with a personal stake in a particular case had a significant and disproportionate influence in placing the judge on the case by raising funds or directing the judge’s election campaign when the case was pending or imminent.” *Id.*, at

Decision No. 78040

884, 129 S.Ct., at 2263–2264. The remedy of recusal was based on a litigant's due process right to a fair trial before an unbiased judge. See *Withrow v. Larkin*, 421 U.S. 35, 46, 95 S.Ct. 1456, 43 L.Ed.2d 712 (1975). *Caperton*'s holding was limited to the rule that the judge must be recused, not that the litigant's political speech could be banned.

The *McConnell* record was “over 100,000 pages” long, *McConnell I*, 251 F.Supp.2d, at 209, yet it “does not have any direct examples of votes being exchanged for ... expenditures,” *id.*, at 560 (opinion of Kollar-Kotelly, J.). This confirms *Buckley*'s reasoning that independent expenditures do not lead to, or create the appearance of, *quid pro quo* corruption. In fact, there is only scant evidence that independent expenditures even ingratiate. See 251 F.Supp.2d, at 555–557 (opinion of Kollar-Kotelly, J.). Ingratiation and access, in any event, are not corruption. The BCRA record establishes that certain donations to political parties, called “soft \*361 money,” were made to gain access to elected officials. *McConnell*, *supra*, at 125, 130–131, 146–152, 124 S.Ct. 619; see *McConnell I*, 251 F.Supp.2d, at 471–481, 491–506 (opinion of Kollar-Kotelly, J.); *id.*, at 842–843, 858–859 (opinion of Leon, J.). This case, however, is about \*\*911 independent expenditures, not soft money. When Congress finds that a problem exists, we must give that finding due deference; but Congress may not choose an unconstitutional remedy. If elected officials succumb to improper influences from independent expenditures; if they surrender their best judgment; and if they put expediency before principle, then surely there is cause for concern. We must give weight to attempts by Congress to seek to dispel either the appearance or the reality of these influences. The remedies enacted by law, however, must comply with the First Amendment; and it is our law and our tradition that more speech, not less, is the governing rule. An outright ban on corporate political speech during the critical preelection period is not a permissible remedy. Here Congress has created categorical bans on speech that are asymmetrical to preventing *quid pro quo* corruption.

3

The Government contends further that corporate independent expenditures can be limited because of its interest in protecting dissenting shareholders from being compelled to fund corporate political speech. This asserted interest, like *Austin*'s antidistortion rationale, would allow the Government to ban the political speech even of media corporations. See

*supra*, at 905 – 906. Assume, for example, that a shareholder of a corporation that owns a newspaper disagrees with the political views the newspaper expresses. See *Austin*, 494 U.S., at 687, 110 S.Ct. 1391 (SCALIA, J., dissenting). Under the Government's view, that potential disagreement could give the Government the authority to restrict the media corporation's political speech. The First Amendment does not allow that power. There is, furthermore, little evidence of \*362 abuse that cannot be corrected by shareholders “through the procedures of corporate democracy.” *Bellotti*, 435 U.S., at 794, 98 S.Ct. 1407; see *ibid.*, n. 34.

Those reasons are sufficient to reject this shareholder-protection interest; and, moreover, the statute is both underinclusive and overinclusive. As to the first, if Congress had been seeking to protect dissenting shareholders, it would not have banned corporate speech in only certain media within 30 or 60 days before an election. A dissenting shareholder's interests would be implicated by speech in any media at any time. As to the second, the statute is overinclusive because it covers all corporations, including nonprofit corporations and for-profit corporations with only single shareholders. As to other corporations, the remedy is not to restrict speech but to consider and explore other regulatory mechanisms. The regulatory mechanism here, based on speech, contravenes the First Amendment.

4

We need not reach the question whether the Government has a compelling interest in preventing foreign individuals or associations from influencing our Nation's political process. Cf. 2 U.S.C. § 441e (contribution and expenditure ban applied to “foreign national[s]”). Section 441b is not limited to corporations or associations that were created in foreign countries or funded predominately by foreign shareholders. Section 441b therefore would be overbroad even if we assumed, *arguendo*, that the Government has a compelling interest in limiting foreign influence over our political process. See *Broadrick*, 413 U.S., at 615, 93 S.Ct. 2908.

C

[16] [17] Our precedent is to be respected unless the most convincing of reasons demonstrates that adherence to it puts us \*\*912 on a course that is sure error. “Beyond workability, the relevant factors in deciding whether to adhere

Decision No. 78040

APP-027

to the principle of *stare decisis* include the antiquity of the precedent, the reliance interests at stake, and of course whether the decision was well reasoned.” *Montejo v. Louisiana*, 556 U.S. 778, 792 – 793, 129 S.Ct. 2079, 2088–2089, 173 L.Ed.2d 955 (2009) (overruling *Michigan v. Jackson*, 475 U.S. 625, 106 S.Ct. 1404, 89 L.Ed.2d 631 (1986)). We have also examined whether “experience has pointed up the precedent’s shortcomings.” *Pearson v. Callahan*, 555 U.S. 223, 233, 129 S.Ct. 808, 816, 172 L.Ed.2d 565 (2009) (overruling *Saucier v. Katz*, 533 U.S. 194, 121 S.Ct. 2151, 150 L.Ed.2d 272 (2001)).

[18] These considerations counsel in favor of rejecting *Austin*, which itself contravened this Court’s earlier precedents in *Buckley* and *Bellotti*. “This Court has not hesitated to overrule decisions offensive to the First Amendment.” *WRTL*, 551 U.S., at 500, 127 S.Ct. 2652 (opinion of SCALIA, J.). “[S]tare decisis is a principle of policy and not a mechanical formula of adherence to the latest decision.” *Helvering v. Hallock*, 309 U.S. 106, 119, 60 S.Ct. 444, 84 L.Ed. 604 (1940).

[19] For the reasons above, it must be concluded that *Austin* was not well reasoned. The Government defends *Austin*, relying almost entirely on “the quid pro quo interest, the corruption interest or the shareholder interest,” and not *Austin*’s expressed antidistortion rationale. Tr. of Oral Arg. 48 (Sept. 9, 2009); see *id.*, at 45–46. When neither party defends the reasoning of a precedent, the principle of adhering to that precedent through *stare decisis* is diminished. *Austin* abandoned First Amendment principles, furthermore, by relying on language in some of our precedents that traces back to the *Automobile Workers* Court’s flawed historical account of campaign finance laws, see Brief for Campaign Finance Scholars as *Amici Curiae*; Hayward, 45 Harv. J. Legis. 421; R. Mutch, *Campaigns, Congress, and Courts* 33–35, 153–157 (1988). See *Austin*, *supra*, at 659, 110 S.Ct. 1391 (citing *MCFL*, 479 U.S., at 257–258, 107 S.Ct. 616; *NCPAC*, 470 U.S., at 500–501, 105 S.Ct. 1459); *MCFL*, *supra*, at 257, 107 S.Ct. 616 (citing *Automobile Workers*, 352 U.S., at 585, 77 S.Ct. 529); *NCPAC*, *supra*, at 500, 105 S.Ct. 1459 (citing *NRWC*, 459 U.S., at 210, 103 S.Ct. 552); *id.*, at 208, 103 S.Ct. 552 (“The history of the movement to regulate the political contributions and expenditures of corporations \*364 and labor unions is set forth in great detail in [*Automobile Workers*], *supra*, at 570–584, 77 S.Ct. 529, and we need only summarize the development here”).

*Austin* is undermined by experience since its announcement. Political speech is so ingrained in our culture that speakers find ways to circumvent campaign finance laws. See, e.g., *McConnell*, 540 U.S., at 176–177, 124 S.Ct. 619 (“Given BCRA’s tighter restrictions on the raising and spending of soft money, the incentives ... to exploit [26 U.S.C. § 527] organizations will only increase”). Our Nation’s speech dynamic is changing, and informative voices should not have to circumvent onerous restrictions to exercise their First Amendment rights. Speakers have become adept at presenting citizens with sound bites, talking points, and scripted messages that dominate the 24-hour news cycle. Corporations, like individuals, do not have monolithic views. On certain topics corporations may possess valuable expertise, leaving them the best equipped to point out errors or fallacies in speech of all sorts, including the speech of candidates and elected officials.

Rapid changes in technology—and the creative dynamic inherent in the concept of \*913 free expression—counsel against upholding a law that restricts political speech in certain media or by certain speakers. See Part II–C, *supra*. Today, 30-second television ads may be the most effective way to convey a political message. See *McConnell*, *supra*, at 261, 124 S.Ct. 619 (opinion of SCALIA, J.). Soon, however, it may be that Internet sources, such as blogs and social networking Web sites, will provide citizens with significant information about political candidates and issues. Yet, § 441b would seem to ban a blog post expressly advocating the election or defeat of a candidate if that blog were created with corporate funds. See 2 U.S.C. § 441b(a); *MCFL*, *supra*, at 249, 107 S.Ct. 616. The First Amendment does not permit Congress to make these categorical distinctions based on the corporate identity of the speaker and the content of the political speech.

\*365 [20] No serious reliance interests are at stake. As the Court stated in *Payne v. Tennessee*, 501 U.S. 808, 828, 111 S.Ct. 2597, 115 L.Ed.2d 720 (1991), reliance interests are important considerations in property and contract cases, where parties may have acted in conformance with existing legal rules in order to conduct transactions. Here, though, parties have been prevented from acting—corporations have been banned from making independent expenditures. Legislatures may have enacted bans on corporate expenditures believing that those bans were constitutional. This is not a compelling interest for *stare decisis*. If it were, legislative acts could prevent us from overruling our own precedents, thereby interfering with our



duty “to say what the law is.” *Marbury v. Madison*, 1 Cranch 137, 177, 2 L.Ed. 60 (1803).

[21] Due consideration leads to this conclusion: *Austin*, 494 U.S. 652, 110 S.Ct. 1391, 108 L.Ed.2d 652, should be and now is overruled. We return to the principle established in *Buckley* and *Bellotti* that the Government may not suppress political speech on the basis of the speaker's corporate identity. No sufficient governmental interest justifies limits on the political speech of nonprofit or for-profit corporations.

D

[22] *Austin* is overruled, so it provides no basis for allowing the Government to limit corporate independent expenditures. As the Government appears to concede, overruling *Austin* “effectively invalidate[s] not only BCRA Section 203, but also 2 U.S.C. 441b's prohibition on the use of corporate treasury funds for express advocacy.” Brief for Appellee 33, n. 12. Section 441b's restrictions on corporate independent expenditures are therefore invalid and cannot be applied to *Hillary*.

Given our conclusion we are further required to overrule the part of *McConnell* that upheld BCRA § 203's extension of § 441b's restrictions on corporate independent expenditures. See 540 U.S., at 203–209, 124 S.Ct. 619. The *McConnell* Court relied on \*366 the antidistortion interest recognized in *Austin* to uphold a greater restriction on speech than the restriction upheld in *Austin*, see 540 U.S., at 205, 124 S.Ct. 619, and we have found this interest unconvincing and insufficient. This part of *McConnell* is now overruled.

IV

A

[23] Citizens United next challenges BCRA's disclaimer and disclosure provisions as applied to *Hillary* and the three advertisements for the movie. Under BCRA § 311, televised electioneering communications funded by anyone other than a candidate must include a disclaimer that \*\*914 “\_\_\_\_\_ is responsible for the content of this advertising.” 2 U.S.C. § 441d(d)(2). The required statement must be made in a “clearly spoken manner,” and displayed on the screen in a “clearly readable manner” for at least four seconds. *Ibid*. It must state

that the communication “is not authorized by any candidate or candidate's committee”; it must also display the name and address (or Web site address) of the person or group that funded the advertisement. § 441d(a)(3). Under BCRA § 201, any person who spends more than \$10,000 on electioneering communications within a calendar year must file a disclosure statement with the FEC. 2 U.S.C. § 434(f)(1). That statement must identify the person making the expenditure, the amount of the expenditure, the election to which the communication was directed, and the names of certain contributors. § 434(f)(2).

Disclaimer and disclosure requirements may burden the ability to speak, but they “impose no ceiling on campaign-related activities,” *Buckley*, 424 U.S., at 64, 96 S.Ct. 612, and “do not prevent anyone from speaking.” *McConnell*, *supra*, at 201, 124 S.Ct. 619 (internal quotation marks and brackets omitted). The Court has subjected these requirements to “exacting scrutiny,” which requires a “substantial relation” between the disclosure requirement and a “sufficiently important” governmental \*367 interest. *Buckley*, *supra*, at 64, 96 S.Ct. 612 (internal quotation marks omitted); see *McConnell*, *supra*, at 231–232, 124 S.Ct. 619.

In *Buckley*, the Court explained that disclosure could be justified based on a governmental interest in “provid[ing] the electorate with information” about the sources of election-related spending. 424 U.S., at 66, 96 S.Ct. 612. The *McConnell* Court applied this interest in rejecting facial challenges to BCRA §§ 201 and 311. 540 U.S., at 196, 124 S.Ct. 619. There was evidence in the record that independent groups were running election-related advertisements “while hiding behind dubious and misleading names.” *Id.*, at 197, 124 S.Ct. 619 (quoting *McConnell I*, 251 F.Supp.2d, at 237). The Court therefore upheld BCRA §§ 201 and 311 on the ground that they would help citizens “‘make informed choices in the political marketplace.’” 540 U.S., at 197, 124 S.Ct. 619 (quoting *McConnell I*, *supra*, at 237); see 540 U.S., at 231, 124 S.Ct. 619.

Although both provisions were facially upheld, the Court acknowledged that as-applied challenges would be available if a group could show a “‘reasonable probability’” that disclosure of its contributors' names “‘will subject them to threats, harassment, or reprisals from either Government officials or private parties.’” *Id.*, at 198, 124 S.Ct. 619 (quoting *Buckley*, *supra*, at 74, 96 S.Ct. 612).

For the reasons stated below, we find the statute valid as applied to the ads for the movie and to the movie itself.

## B

Citizens United sought to broadcast one 30-second and two 10-second ads to promote *Hillary*. Under FEC regulations, a communication that “[p]roposes a commercial transaction” was not subject to 2 U.S.C. § 441b’s restrictions on corporate or union funding of electioneering communications. 11 CFR § 114.15(b)(3)(ii). The regulations, however, do not exempt those communications from the disclaimer and disclosure requirements in BCRA §§ 201 and 311. See 72 Fed.Reg. 72901 (2007).

**\*368 [24]** Citizens United argues that the disclaimer requirements in § 311 are unconstitutional as applied to its ads. It contends that the governmental interest in providing information to the electorate does not justify requiring disclaimers for **\*\*915** any commercial advertisements, including the ones at issue here. We disagree. The ads fall within BCRA’s definition of an “electioneering communication”: They referred to then-Senator Clinton by name shortly before a primary and contained pejorative references to her candidacy. See 530 F.Supp.2d, at 276, nn. 2–4. The disclaimers required by § 311 “provid[e] the electorate with information,” *McConnell*, *supra*, at 196, 124 S.Ct. 619, and “insure that the voters are fully informed” about the person or group who is speaking, *Buckley*, *supra*, at 76, 96 S.Ct. 612; see also *Bellotti*, 435 U.S., at 792, n. 32, 98 S.Ct. 1407 (“Identification of the source of advertising may be required as a means of disclosure, so that the people will be able to evaluate the arguments to which they are being subjected”). At the very least, the disclaimers avoid confusion by making clear that the ads are not funded by a candidate or political party.

Citizens United argues that § 311 is underinclusive because it requires disclaimers for broadcast advertisements but not for print or Internet advertising. It asserts that § 311 decreases both the quantity and effectiveness of the group’s speech by forcing it to devote four seconds of each advertisement to the spoken disclaimer. We rejected these arguments in *McConnell*, *supra*, at 230–231, 124 S.Ct. 619. And we now adhere to that decision as it pertains to the disclosure provisions.

As a final point, Citizens United claims that, in any event, the disclosure requirements in § 201 must be confined to speech that is the functional equivalent of express advocacy. The principal opinion in *WRTL* limited 2 U.S.C. § 441b’s restrictions on independent expenditures to express advocacy and its functional equivalent. 551 U.S., at 469–476, 127 S.Ct. 2652 (opinion of ROBERTS, C.J.). Citizens United seeks to import a similar **\*369** distinction into BCRA’s disclosure requirements. We reject this contention.

The Court has explained that disclosure is a less restrictive alternative to more comprehensive regulations of speech. See, e.g., *MCFL*, 479 U.S., at 262, 107 S.Ct. 616. In *Buckley*, the Court upheld a disclosure requirement for independent expenditures even though it invalidated a provision that imposed a ceiling on those expenditures. 424 U.S., at 75–76, 96 S.Ct. 612. In *McConnell*, three Justices who would have found § 441b to be unconstitutional nonetheless voted to uphold BCRA’s disclosure and disclaimer requirements. 540 U.S., at 321, 124 S.Ct. 619 (opinion of KENNEDY, J., joined by Rehnquist, C.J., and SCALIA, J.). And the Court has upheld registration and disclosure requirements on lobbyists, even though Congress has no power to ban lobbying itself. *United States v. Harriss*, 347 U.S. 612, 625, 74 S.Ct. 808, 98 L.Ed. 989 (1954) (Congress “has merely provided for a modicum of information from those who for hire attempt to influence legislation or who collect or spend funds for that purpose”). For these reasons, we reject Citizens United’s contention that the disclosure requirements must be limited to speech that is the functional equivalent of express advocacy.

Citizens United also disputes that an informational interest justifies the application of § 201 to its ads, which only attempt to persuade viewers to see the film. Even if it disclosed the funding sources for the ads, Citizens United says, the information would not help viewers make informed choices in the political marketplace. This is similar to the argument rejected above with respect to disclaimers. Even if the ads only pertain to a commercial transaction, the public has an interest in knowing who is speaking about a candidate shortly before an election. Because the informational **\*\*916** interest alone is sufficient to justify application of § 201 to these ads, it is not necessary to consider the Government’s other asserted interests.

**\*370** Last, Citizens United argues that disclosure requirements can chill donations to an organization by exposing donors to retaliation. Some *amici* point to recent events in which donors to certain causes were blacklisted.



threatened, or otherwise targeted for retaliation. See Brief for Institute for Justice as *Amicus Curiae* 13–16; Brief for Alliance Defense Fund as *Amicus Curiae* 16–22. In *McConnell*, the Court recognized that § 201 would be unconstitutional as applied to an organization if there were a reasonable probability that the group's members would face threats, harassment, or reprisals if their names were disclosed. 540 U.S., at 198, 124 S.Ct. 619. The examples cited by *amici* are cause for concern. Citizens United, however, has offered no evidence that its members may face similar threats or reprisals. To the contrary, Citizens United has been disclosing its donors for years and has identified no instance of harassment or retaliation.

Shareholder objections raised through the procedures of corporate democracy, see *Bellotti*, *supra*, at 794, and n. 34, 98 S.Ct. 1407, can be more effective today because modern technology makes disclosures rapid and informative. A campaign finance system that pairs corporate independent expenditures with effective disclosure has not existed before today. It must be noted, furthermore, that many of Congress' findings in passing BCRA were premised on a system without adequate disclosure. See *McConnell*, 540 U.S., at 128, 124 S.Ct. 619 (“[T]he public may not have been fully informed about the sponsorship of so-called issue ads”); *id.*, at 196–197, 124 S.Ct. 619 (citing *McConnell I*, 251 F.Supp.2d, at 237). With the advent of the Internet, prompt disclosure of expenditures can provide shareholders and citizens with the information needed to hold corporations and elected officials accountable for their positions and supporters. Shareholders can determine whether their corporation's political speech advances the corporation's interest in making profits, and citizens can see whether elected officials are “in the pocket” of so-called moneyed interests.” 540 U.S., at 259, 124 S.Ct. 619 (opinion of SCALIA, J.); see \*371 *MCFL*, *supra*, at 261, 107 S.Ct. 616. The First Amendment protects political speech; and disclosure permits citizens and shareholders to react to the speech of corporate entities in a proper way. This transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages.

C

For the same reasons we uphold the application of BCRA §§ 201 and 311 to the ads, we affirm their application to *Hillary*. We find no constitutional impediment to the application of BCRA's disclaimer and disclosure requirements to a movie

broadcast via video-on-demand. And there has been no showing that, as applied in this case, these requirements would impose a chill on speech or expression.

V

When word concerning the plot of the movie *Mr. Smith Goes to Washington* reached the circles of Government, some officials sought, by persuasion, to discourage its distribution. See Smoodin, “Compulsory” Viewing for Every Citizen: *Mr. Smith* and the Rhetoric of Reception, 35 Cinema Journal 3, 19, and n. 52 (Winter 1996) (citing Mr. Smith Riles Washington, Time, Oct. 30, 1939, p. 49); Nugent, Capra's Capitol Offense, N.Y. Times, Oct. 29, 1939, p. X5. Under *Austin*, though, officials could have done more than discourage \*\*917 its distribution—they could have banned the film. After all, it, like *Hillary*, was speech funded by a corporation that was critical of Members of Congress. *Mr. Smith Goes to Washington* may be fiction and caricature; but fiction and caricature can be a powerful force.

Modern day movies, television comedies, or skits on YouTube.com might portray public officials or public policies in unflattering ways. Yet if a covered transmission during the blackout period creates the background for candidate endorsement or opposition, a felony occurs solely because a corporation, other than an exempt media corporation, has made \*372 the “purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value” in order to engage in political speech. 2 U.S.C. § 431(9) (A)(i). Speech would be suppressed in the realm where its necessity is most evident: in the public dialogue preceding a real election. Governments are often hostile to speech, but under our law and our tradition it seems stranger than fiction for our Government to make this political speech a crime. Yet this is the statute's purpose and design.

Some members of the public might consider *Hillary* to be insightful and instructive; some might find it to be neither high art nor a fair discussion on how to set the Nation's course; still others simply might suspend judgment on these points but decide to think more about issues and candidates. Those choices and assessments, however, are not for the Government to make. “The First Amendment underwrites the freedom to experiment and to create in the realm of thought and speech. Citizens must be free to use new forms, and new forums, for the expression of ideas. The civic discourse belongs to the people, and the Government may not prescribe

the means used to conduct it.” *McConnell*, *supra*, at 341, 124 S.Ct. 619 (opinion of KENNEDY, J.).

The judgment of the District Court is reversed with respect to the constitutionality of 2 U.S.C. § 441b's restrictions on corporate independent expenditures. The judgment is affirmed with respect to BCRA's disclaimer and disclosure requirements. The case is remanded for further proceedings consistent with this opinion.

*It is so ordered.*

Chief Justice ROBERTS, with whom Justice ALITO joins, concurring.

The Government urges us in this case to uphold a direct prohibition on political speech. It asks us to embrace a theory of the First Amendment that would allow censorship not only of television and radio broadcasts, but of pamphlets, \*373 posters, the Internet, and virtually any other medium that corporations and unions might find useful in expressing their views on matters of public concern. Its theory, if accepted, would empower the Government to prohibit newspapers from running editorials or opinion pieces supporting or opposing candidates for office, so long as the newspapers were owned by corporations—as the major ones are. First Amendment rights could be confined to individuals, subverting the vibrant public discourse that is at the foundation of our democracy.

The Court properly rejects that theory, and I join its opinion in full. The First Amendment protects more than just the individual on a soapbox and the lonely pamphleteer. I write separately to address the important principles of judicial restraint and *stare decisis* implicated in this case.

I

Judging the constitutionality of an Act of Congress is “the gravest and most delicate duty that this Court is called on to perform.” \*\*918 *Blodgett v. Holden*, 275 U.S. 142, 147–148, 48 S.Ct. 105, 72 L.Ed. 206 (1927) (Holmes, J., concurring). Because the stakes are so high, our standard practice is to refrain from addressing constitutional questions except when necessary to rule on particular claims before us. See *Ashwander v. TVA*, 297 U.S. 288, 346–348, 56 S.Ct. 466, 80 L.Ed. 688 (1936) (Brandeis, J., concurring). This policy underlies both our willingness to construe ambiguous statutes to avoid constitutional problems and our practice “never to

formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied.” *United States v. Raines*, 362 U.S. 17, 21, 80 S.Ct. 519, 4 L.Ed.2d 524 (1960) (quoting *Liverpool, New York & Philadelphia S.S. Co. v. Commissioners of Emigration*, 113 U.S. 33, 39, 5 S.Ct. 352, 28 L.Ed. 899 (1885)).

The majority and dissent are united in expressing allegiance to these principles. *Ante*, at 892; *post*, at 936–937 (STEVENS, J., concurring in part and dissenting in part). \*374 But I cannot agree with my dissenting colleagues on how these principles apply in this case.

The majority's step-by-step analysis accords with our standard practice of avoiding broad constitutional questions except when necessary to decide the case before us. The majority begins by addressing—and quite properly rejecting—Citizens United's statutory claim that 2 U.S.C. § 441b does not actually cover its production and distribution of *Hillary: The Movie* (hereinafter *Hillary*). If there were a valid basis for deciding this statutory claim in Citizens United's favor (and thereby avoiding constitutional adjudication), it would be proper to do so. Indeed, that is precisely the approach the Court took just last Term in *Northwest Austin Municipal Util. Dist. No. One v. Holder*, 557 U.S. 193, 129 S.Ct. 2504, 174 L.Ed.2d 140 (2009), when eight Members of the Court agreed to decide the case on statutory grounds instead of reaching the appellant's broader argument that the Voting Rights Act is unconstitutional.

It is only because the majority rejects Citizens United's statutory claim that it proceeds to consider the group's various constitutional arguments, beginning with its narrowest claim (that *Hillary* is not the functional equivalent of express advocacy) and proceeding to its broadest claim (that *Austin v. Michigan Chamber of Commerce*, 494 U.S. 652, 110 S.Ct. 1391, 108 L.Ed.2d 652 (1990), should be overruled). This is the same order of operations followed by the controlling opinion in *Federal Election Comm'n v. Wisconsin Right to Life, Inc.*, 551 U.S. 449, 127 S.Ct. 2652, 168 L.Ed.2d 329 (2007) (*WRTL*). There the appellant was able to prevail on its narrowest constitutional argument because its broadcast ads did not qualify as the functional equivalent of express advocacy; there was thus no need to go on to address the broader claim that *McConnell v. Federal Election Comm'n*, 540 U.S. 93, 124 S.Ct. 619, 157 L.Ed.2d 491 (2003), should be overruled. *WRTL*, 551 U.S., at 482, 127 S.Ct. 2652; *id.*, at 482–483, 127 S.Ct. 2652 (ALITO, J., concurring). This case is different—not, as the dissent suggests, because the

approach taken in *WRTL* has been deemed a “failure,” *post*, at 935, \*375 but because, in the absence of any valid narrower ground of decision, there is no way to avoid Citizens United’s broader constitutional argument.

The dissent advocates an approach to addressing Citizens United’s claims that I find quite perplexing. It presumably agrees with the majority that Citizens United’s narrower statutory and constitutional arguments lack merit—otherwise its conclusion that the group should lose this case would make no sense. Despite agreeing \*\*919 that these narrower arguments fail, however, the dissent argues that the majority should nonetheless latch on to one of them in order to avoid reaching the broader constitutional question of whether *Austin* remains good law. It even suggests that the Court’s failure to adopt one of these concededly meritless arguments is a sign that the majority is not “serious about judicial restraint.” *Post*, at 938.

This approach is based on a false premise: that our practice of avoiding unnecessary (and unnecessarily broad) constitutional holdings somehow trumps our obligation faithfully to interpret the law. It should go without saying, however, that we cannot embrace a narrow ground of decision simply because it is narrow; it must also be right. Thus while it is true that “[i]f it is not necessary to decide more, it is necessary not to decide more,” *post*, at 937 (internal quotation marks omitted), sometimes it *is* necessary to decide more. There is a difference between judicial restraint and judicial abdication. When constitutional questions are “indispensably necessary” to resolving the case at hand, “the court must meet and decide them.” *Ex parte Randolph*, 20 F. Cas. 242, 254 (No. 11,558) (CC Va. 1833) (Marshall, C.J.).

Because it is necessary to reach Citizens United’s broader argument that *Austin* should be overruled, the debate over whether to consider this claim on an as-applied or facial basis strikes me as largely beside the point. Citizens United has standing—it is being injured by the Government’s enforcement of the Act. Citizens United has a constitutional \*376 claim—the Act violates the First Amendment, because it prohibits political speech. The Government has a defense—the Act may be enforced, consistent with the First Amendment, against corporations. Whether the claim or the defense prevails is the question before us.

Given the nature of that claim and defense, it makes no difference of any substance whether this case is resolved by invalidating the statute on its face or only as applied

to Citizens United. Even if considered in as-applied terms, a holding in this case that the Act may not be applied to Citizens United—because corporations as well as individuals enjoy the pertinent First Amendment rights—would mean that any other corporation raising the same challenge would also win. Likewise, a conclusion that the Act may be applied to Citizens United—because it is constitutional to prohibit corporate political speech—would similarly govern future cases. Regardless whether we label Citizens United’s claim a “facial” or “as-applied” challenge, the consequences of the Court’s decision are the same.<sup>1</sup>

## II

The text and purpose of the First Amendment point in the same direction: Congress may not prohibit political speech, even if the speaker is a corporation or union. What makes this case difficult is the need to confront our prior decision in *Austin*.

This is the first case in which we have been asked to overrule *Austin*, and thus it is also the first in which we have had reason to consider how much weight to give *stare decisis* in assessing its continued validity. The dissent erroneously \*\*920 \*377 declares that the Court “reaffirmed” *Austin*’s holding in subsequent cases—namely, *Federal Election Comm’n v. Beaumont*, 539 U.S. 146, 123 S.Ct. 2200, 156 L.Ed.2d 179 (2003); *McConnell*; and *WRTL Post*, at 956 – 957. Not so. Not a single party in any of those cases asked us to overrule *Austin*, and as the dissent points out, *post*, at 931 – 932, the Court generally does not consider constitutional arguments that have not properly been raised. *Austin*’s validity was therefore not directly at issue in the cases the dissent cites. The Court’s unwillingness to overturn *Austin* in those cases cannot be understood as a *reaffirmation* of that decision.

## A

Fidelity to precedent—the policy of *stare decisis*—is vital to the proper exercise of the judicial function. “*Stare decisis* is the preferred course because it promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process.” *Payne v. Tennessee*, 501 U.S. 808, 827, 111 S.Ct. 2597, 115 L.Ed.2d 720 (1991). For these reasons, we have long recognized that departures from precedent are inappropriate in the absence

Decision No. 78040

of a "special justification." *Arizona v. Rumsey*, 467 U.S. 203, 212, 104 S.Ct. 2305, 81 L.Ed.2d 164 (1984).

At the same time, *stare decisis* is neither an "inexorable command," *Lawrence v. Texas*, 539 U.S. 558, 577, 123 S.Ct. 2472, 156 L.Ed.2d 508 (2003), nor "a mechanical formula of adherence to the latest decision," *Helvering v. Hallock*, 309 U.S. 106, 119, 60 S.Ct. 444, 84 L.Ed. 604 (1940), especially in constitutional cases, see *United States v. Scott*, 437 U.S. 82, 101, 98 S.Ct. 2187, 57 L.Ed.2d 65 (1978). If it were, segregation would be legal, minimum wage laws would be unconstitutional, and the Government could wiretap ordinary criminal suspects without first obtaining warrants. See *Plessy v. Ferguson*, 163 U.S. 537, 16 S.Ct. 1138, 41 L.Ed. 256 (1896), overruled by *Brown v. Board of Education*, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954); *Adkins v. Children's Hospital of D. C.*, 261 U.S. 525, 43 S.Ct. 394, 67 L.Ed. 785 (1923), overruled by *West Coast Hotel Co. v. Parrish*, 300 U.S. 379, 57 S.Ct. 578, 81 L.Ed. 703 (1937); *Olmstead v. United States*, 277 U.S. 438, 48 S.Ct. 564, 72 L.Ed. 944 (1928), overruled by \*378 *Katz v. United States*, 389 U.S. 347, 88 S.Ct. 507, 19 L.Ed.2d 576 (1967). As the dissent properly notes, none of us has viewed *stare decisis* in such absolute terms. *Post*, at 938 – 939; see also, e.g., *Randall v. Sorrell*, 548 U.S. 230, 274–281, 126 S.Ct. 2479, 165 L.Ed.2d 482 (2006) (STEVENS, J., dissenting) (urging the Court to overrule its invalidation of limits on independent expenditures on political speech in *Buckley v. Valeo*, 424 U.S. 1, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976) (*per curiam*)).

*Stare decisis* is instead a "principle of policy." *Helvering*, *supra*, at 119, 60 S.Ct. 444. When considering whether to reexamine a prior erroneous holding, we must balance the importance of having constitutional questions *decided* against the importance of having them *decided right*. As Justice Jackson explained, this requires a "sober appraisal of the disadvantages of the innovation as well as those of the questioned case, a weighing of practical effects of one against the other." Jackson, *Decisional Law and Stare Decisis*, 30 A.B.A.J. 334 (1944).

In conducting this balancing, we must keep in mind that *stare decisis* is not an end in itself. It is instead "the means by which we ensure that the law will not merely change erratically, but will develop in a principled and intelligible fashion." \*\*921 *Vasquez v. Hillery*, 474 U.S. 254, 265, 106 S.Ct. 617, 88 L.Ed.2d 598 (1986). Its greatest purpose is to serve a constitutional ideal—the rule of law. It follows that in the unusual circumstance when fidelity to any particular

precedent does more to damage this constitutional ideal than to advance it, we must be more willing to depart from that precedent.

Thus, for example, if the precedent under consideration itself departed from the Court's jurisprudence, returning to the "inherently sounder" doctrine established in prior cases" may "better serv[e] the values of *stare decisis* than would following [the] more recently decided case inconsistent with the decisions that came before it." *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 231, 115 S.Ct. 2097, 132 L.Ed.2d 158 (1995); see also *Helvering*, *supra*, at 119, 60 S.Ct. 444; *Randall*, *supra*, at 274, 126 S.Ct. 2479 (STEVENS, J., dissenting). Abrogating the errant precedent, rather than \*379 reaffirming or extending it, might better preserve the law's coherence and curtail the precedent's disruptive effects.

Likewise, if adherence to a precedent actually impedes the stable and orderly adjudication of future cases, its *stare decisis* effect is also diminished. This can happen in a number of circumstances, such as when the precedent's validity is so hotly contested that it cannot reliably function as a basis for decision in future cases, when its rationale threatens to upend our settled jurisprudence in related areas of law, and when the precedent's underlying reasoning has become so discredited that the Court cannot keep the precedent alive without jury-rigging new and different justifications to shore up the original mistake. See, e.g., *Pearson v. Callahan*, 555 U.S. 223, 235, 129 S.Ct. 808, 817, 172 L.Ed.2d 565 (2009); *Montejo v. Louisiana*, 556 U.S. 778, 792, 129 S.Ct. 2079, 2088–2089, 173 L.Ed.2d 955 (2009) (*stare decisis* does not control when adherence to the prior decision requires "fundamentally revising its theoretical basis").

## B

These considerations weigh against retaining our decision in *Austin*. First, as the majority explains, that decision was an "aberration" insofar as it departed from the robust protections we had granted political speech in our earlier cases. *Ante*, at 907; see also *Buckley*, *supra*; *First Nat. Bank of Boston v. Bellotti*, 435 U.S. 765, 98 S.Ct. 1407, 55 L.Ed.2d 707 (1978). *Austin* undermined the careful line that *Buckley* drew to distinguish limits on contributions to candidates from limits on independent expenditures on speech. *Buckley* rejected the asserted government interest in regulating independent expenditures, concluding that "restrict[ing] the speech of some elements of our society in order to enhance the



relative voice of others is wholly foreign to the First Amendment.” 424 U.S., at 48–49, 96 S.Ct. 612; see also *Bellotti*, *supra*, at 790–791, 98 S.Ct. 1407; *Citizens Against Rent Control/Coalition for Fair Housing v. Berkeley*, 454 U.S. 290, 295, 102 S.Ct. 434, 70 L.Ed.2d 492 (1981). *Austin*, however, allowed the Government to prohibit these same expenditures out of concern for “the corrosive and distorting effects of immense aggregations \*380 of wealth” in the marketplace of ideas. 494 U.S., at 660, 110 S.Ct. 1391. *Austin*’s reasoning was—and remains—inconsistent with *Buckley*’s explicit repudiation of any government interest in “equalizing the relative ability of individuals and groups to influence the outcome of elections.” 424 U.S., at 48–49, 96 S.Ct. 612.

*Austin* was also inconsistent with *Bellotti*’s clear rejection of the idea that “speech that otherwise would be within the protection of the First Amendment loses that \*\*922 protection simply because its source is a corporation.” 435 U.S., at 784, 98 S.Ct. 1407. The dissent correctly points out that *Bellotti* involved a referendum rather than a candidate election, and that *Bellotti* itself noted this factual distinction, *id.*, at 788, n. 26, 98 S.Ct. 1407; *post*, at 958. But this distinction does not explain why corporations may be subject to prohibitions on speech in candidate elections when individuals may not.

Second, the validity of *Austin*’s rationale—itsself adopted over two “spirited dissents,” *Payne*, 501 U.S., at 829, 111 S.Ct. 2597—has proved to be the consistent subject of dispute among Members of this Court ever since. See, e.g., *WRTL*, 551 U.S., at 483, 127 S.Ct. 2652 (SCALIA, J., joined by KENNEDY and THOMAS, JJ., concurring in part and concurring in judgment); *McConnell*, 540 U.S., at 247, 264, 286, 124 S.Ct. 619 (opinions of SCALIA, THOMAS, and KENNEDY, JJ.); *Baumont*, 539 U.S., at 163, 164, 123 S.Ct. 2200 (opinions of KENNEDY and THOMAS, JJ.). The simple fact that one of our decisions remains controversial is, of course, insufficient to justify overruling it. But it does undermine the precedent’s ability to contribute to the stable and orderly development of the law. In such circumstances, it is entirely appropriate for the Court—which in this case is squarely asked to reconsider *Austin*’s validity for the first time—to address the matter with a greater willingness to consider new approaches capable of restoring our doctrine to sounder footing.

Third, the *Austin* decision is uniquely destabilizing because it threatens to subvert our Court’s decisions even outside

the particular context of corporate express advocacy. \*381 The First Amendment theory underlying *Austin*’s holding is extraordinarily broad. *Austin*’s logic would authorize government prohibition of political speech by a category of speakers in the name of equality—a point that most scholars acknowledge (and many celebrate), but that the dissent denies. Compare, e.g., Garrett, *New Voices in Politics: Justice Marshall’s Jurisprudence on Law and Politics*, 52 How. L.J. 655, 669 (2009) (*Austin* “has been understood by most commentators to be an opinion driven by equality considerations, albeit disguised in the language of ‘political corruption’ ”), with *post*, at 970 (*Austin*’s rationale “is manifestly not just an ‘equalizing’ ideal in disguise”).<sup>2</sup>

It should not be surprising, then, that Members of the Court have relied on *Austin*’s expansive logic to justify greater incursions on the First Amendment, even outside the original context of corporate advocacy on behalf of candidates running for office. See, e.g., *Davis v. Federal Election Comm’n*, 554 U.S. 724, 756, 128 S.Ct. 2759, 2780, 171 L.Ed.2d 737 (2008) (STEVENS, J., concurring in part and dissenting in part) (relying on *Austin* and other cases to justify restrictions on campaign spending by individual candidates, explaining that “there is no reason that their logic—specifically, their concerns about the corrosive and distorting effects of wealth on our political process—is not \*923 equally applicable in the context of individual wealth”); *McConnell*, *supra*, at 203–209, 124 S.Ct. 619 (extending *Austin* beyond its original context to cover not only the “functional equivalent” of express advocacy by corporations, but also \*382 electioneering speech conducted by labor unions). The dissent in this case succumbs to the same temptation, suggesting that *Austin* justifies prohibiting corporate speech because such speech might unduly influence “the market for legislation.” *Post*, at 975. The dissent reads *Austin* to permit restrictions on corporate speech based on nothing more than the fact that the corporate form may help individuals coordinate and present their views more effectively. *Post*, at 975. A speaker’s ability to persuade, however, provides no basis for government regulation of free and open public debate on what the laws should be.

If taken seriously, *Austin*’s logic would apply most directly to newspapers and other media corporations. They have a more profound impact on public discourse than most other speakers. These corporate entities are, for the time being, not subject to § 441b’s otherwise generally applicable prohibitions on corporate political speech. But this is simply a matter of legislative grace. The fact that the law currently



grants a favored position to media corporations is no reason to overlook the danger inherent in accepting a theory that would allow government restrictions on their political speech. See generally *McConnell*, *supra*, at 283–286, 124 S.Ct. 619 (THOMAS, J., concurring in part, concurring in judgment in part, and dissenting in part).

These readings of *Austin* do no more than carry that decision's reasoning to its logical endpoint. In doing so, they highlight the threat *Austin* poses to First Amendment rights generally, even outside its specific factual context of corporate express advocacy. Because *Austin* is so difficult to confine to its facts—and because its logic threatens to undermine our First Amendment jurisprudence and the nature of public discourse more broadly—the costs of giving it *stare decisis* effect are unusually high.

Finally and most importantly, the Government's own effort to defend *Austin*—or, more accurately, to defend something that is not quite *Austin*—underscores its weakness as \*383 a precedent of the Court. The Government concedes that *Austin* “is not the most lucid opinion,” yet asks us to reaffirm its holding. Tr. of Oral Arg. 62 (Sept. 9, 2009). But while invoking *stare decisis* to support this position, the Government never once even *mentions* the compelling interest that *Austin* relied upon in the first place: the need to diminish “the corrosive and distorting effects of immense aggregations of wealth that are accumulated with the help of the corporate form and that have little or no correlation to the public's support for the corporation's political ideas.” 494 U.S., at 660, 110 S.Ct. 1391.

Instead of endorsing *Austin* on its own terms, the Government urges us to reaffirm *Austin*'s specific holding on the basis of two new and potentially expansive interests—the need to prevent actual or apparent *quid pro quo* corruption, and the need to protect corporate shareholders. See Supp. Brief for Appellee 8–10, 12–13. Those interests may or may not support the *result* in *Austin*, but they were plainly not part of the *reasoning* on which *Austin* relied.

To its credit, the Government forthrightly concedes that *Austin* did not embrace either of the new rationales it now urges upon us. See, e.g., Supp. Brief for Appellee 11 (“The Court did not decide in *Austin* ... whether the compelling interest in preventing actual or apparent corruption provides a constitutionally sufficient justification \*\*924 for prohibiting the use of corporate treasury funds for independent electioneering”); Tr. of Oral Arg. 45 (Sept.

9, 2009) (“*Austin* did not articulate what we believe to be the strongest compelling interest”); *id.*, at 61 (“[The Court:] I take it we have never accepted your shareholder protection interest. This is a new argument. [The Government:] I think that that's fair”); *id.*, at 64 (“[The Court:] In other words, you are asking us to uphold *Austin* on the basis of two arguments, two principles, two compelling interests we have never accepted, in [the context of limits on political expenditures]. [The Government:] [I]n this particular context, fair enough”).

\*384 To be clear: The Court in *Austin* nowhere relied upon the only arguments the Government now raises to support that decision. In fact, the only opinion in *Austin* endorsing the Government's argument based on the threat of *quid pro quo* corruption was Justice STEVENS's concurrence. 494 U.S., at 678, 110 S.Ct. 1391. The Court itself did not do so, despite the fact that the concurrence highlighted the argument. Moreover, the Court's only discussion of shareholder protection in *Austin* appeared in a section of the opinion that sought merely to distinguish *Austin*'s facts from those of *Federal Election Comm'n v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238, 107 S.Ct. 616, 93 L.Ed.2d 539 (1986). *Austin*, *supra*, at 663, 110 S.Ct. 1391. Nowhere did *Austin* suggest that the goal of protecting shareholders is itself a compelling interest authorizing restrictions on First Amendment rights.

To the extent that the Government's case for reaffirming *Austin* depends on radically reconceptualizing its reasoning, that argument is at odds with itself. *Stare decisis* is a doctrine of preservation, not transformation. It counsels deference to past mistakes, but provides no justification for making new ones. There is therefore no basis for the Court to give precedential sway to reasoning that it has never accepted, simply because that reasoning happens to support a conclusion reached on different grounds that have since been abandoned or discredited.

Doing so would undermine the rule-of-law values that justify *stare decisis* in the first place. It would effectively license the Court to invent and adopt new principles of constitutional law solely for the purpose of rationalizing its past errors, without a proper analysis of whether those principles have merit on their own. This approach would allow the Court's past missteps to spawn future mistakes, undercutting the very rule-of-law values that *stare decisis* is designed to protect.

None of this is to say that the Government is barred from making new arguments to support the outcome in *Austin*.

\*385 On the contrary, it is free to do so. And of course

the Court is free to accept them. But the Government's new arguments must stand or fall on their own; they are not entitled to receive the special deference we accord to precedent. They are, as grounds to support *Austin*, literally *un*precedented. Moreover, to the extent the Government relies on new arguments—and declines to defend *Austin* on its own terms—we may reasonably infer that it lacks confidence in that decision's original justification.

Because continued adherence to *Austin* threatens to subvert the “principled and intelligible” development of our First Amendment jurisprudence, *Vasquez*, 474 U.S., at 265, 106 S.Ct. 617, I support the Court's determination to overrule that decision.

\*\*\*

We have had two rounds of briefing in this case, two oral arguments, and 54 *amicus* \*\*925 briefs to help us carry out our obligation to decide the necessary constitutional questions according to law. We have also had the benefit of a comprehensive dissent that has helped ensure that the Court has considered all the relevant issues. This careful consideration convinces me that Congress violates the First Amendment when it decrees that some speakers may not engage in political speech at election time, when it matters most.

Justice SCALIA, with whom Justice ALITO joins, and with whom Justice THOMAS joins in part, concurring.

I join the opinion of the Court.<sup>1</sup>

I write separately to address Justice STEVENS' discussion of “*Original Understandings*,” *post*, at 948 (opinion concurring in part and dissenting in part) (hereinafter referred to as the dissent). This section of the dissent purports to show that today's decision is not supported by the original understanding of the First Amendment. The dissent attempts \*386 this demonstration, however, in splendid isolation from the text of the First Amendment. It never shows why “the freedom of speech” that was the right of Englishmen did not include the freedom to speak in association with other individuals, including association in the corporate form. To be sure, in 1791 (as now) corporations could pursue only the objectives set forth in their charters; but the dissent provides no evidence that their speech in the pursuit of those objectives could be censored.

Instead of taking this straightforward approach to determining the Amendment's meaning, the dissent embarks on a detailed exploration of the Framers' views about the “role of corporations in society.” *Post*, at 949. The Framers did not like corporations, the dissent concludes, and therefore it follows (as night the day) that corporations had no rights of free speech. Of course the Framers' personal affection or disaffection for corporations is relevant only insofar as it can be thought to be reflected in the understood meaning of the text they enacted—not, as the dissent suggests, as a freestanding substitute for that text. But the dissent's distortion of proper analysis is even worse than that. Though faced with a constitutional text that makes no distinction between types of speakers, the dissent feels no necessity to provide even an isolated statement from the founding era to the effect that corporations are *not* covered, but places the burden on appellant to bring forward statements showing that they *are*. *Ibid.* (“[T]here is not a scintilla of evidence to support the notion that anyone believed [the First Amendment] would preclude regulatory distinctions based on the corporate form”).

Despite the corporation-hating quotations the dissent has dredged up, it is far from clear that by the end of the 18th century corporations were despised. If so, how came there to be so many of them? The dissent's statement that there were few business corporations during the 18th century—“only a few hundred during all of the 18th century”—is misleading. 387 *Post*, at 949, n. 53. There were approximately 335 charters issued to business corporations in the United States by the end of the 18th century.<sup>2</sup> See 2 J. & Davis, *Essays in the Earlier History of American Corporations* 24 (1917) (reprinted 2006) (hereinafter Davis). This was a “considerable extension of corporate enterprise in the field of business,” *id.*, at 8, and represented “unprecedented growth,” *id.*, at 309. Moreover, what seems like a small number by today's standards surely does not indicate the relative importance of corporations when the Nation was considerably smaller. As I have previously noted, “[b]y the end of the eighteenth century the corporation was a familiar figure in American economic life.” *McConnell v. Federal Election Comm'n*, 540 U.S. 93, 256, 124 S.Ct. 619, 157 L.Ed.2d 491 (2003) (SCALIA, J., concurring in part, concurring in judgment in part, and dissenting in part) (quoting C. Cooke, *Corporation Trust and Company* 92 (1951) (hereinafter Cooke; internal quotation marks omitted)).

Even if we thought it proper to apply the dissent's approach of excluding from First Amendment coverage what the

Founders disliked, and even if we agreed that the Founders disliked founding-era corporations, modern corporations might not qualify for exclusion. Most of the Founders' resentment toward corporations was directed at the state-granted monopoly privileges that individually chartered corporations enjoyed.<sup>3</sup> Modern corporations do not have such \*388 privileges, and would probably have been favored by most of our enterprising Founders—excluding, perhaps, Thomas Jefferson and others favoring perpetuation of an agrarian society. Moreover, if the Founders' specific intent with respect to corporations is what matters, why does the dissent ignore the Founders' views about other legal entities that have more in common with modern business corporations than the founding-era corporations? At the time of the founding, religious, educational, and literary corporations were incorporated under general incorporation statutes, much as business corporations are today.<sup>4</sup> See Davis 16–17; R. Seavoy, *Origins of the American Business Corporation, 1784–1855*, p. 5 (1982); Cooke 94. There were also small unincorporated business associations, which some have argued were the “‘true progenitors’” of today's business corporations. Friedman 200 (quoting S. Livermore, *Early American Land Companies: Their Influence on Corporate Development* 216 (1939)); see also Davis 33. Were all of these silently excluded from the protections of the First Amendment?

The lack of a textual exception for speech by corporations cannot be explained on the ground that such organizations did not exist or did not speak. To the contrary, colleges, towns and cities, religious institutions, and guilds had long been organized as corporations at common law and under the King's charter, see 1 W. Blackstone, *Commentaries on the Laws of England* 455–473 (1765); 1 S. Kyd, A \*927 *Treatise on the Law of Corporations* 1–32, 63 (1793) (reprinted 2006), and as \*389 I have discussed, the practice of incorporation only expanded in the United States. Both corporations and voluntary associations actively petitioned the Government and expressed their views in newspapers and pamphlets. For example: An antislavery Quaker corporation petitioned the First Congress, distributed pamphlets, and communicated through the press in 1790. W. diGiacomantonio, “For the Gratification of a Volunteering Society”: Antislavery and Pressure Group Politics in the First Federal Congress, 15 *J. Early Republic* 169 (1995). The New York Sons of Liberty sent a circular to Colonies farther south in 1766. P. Maier, *From Resistance to Revolution* 79–80 (1972). And the Society for the Relief and Instruction of Poor Germans circulated a biweekly paper from 1755

to 1757. Adams, *The Colonial German-language Press and the American Revolution*, in *The Press & the American Revolution* 151, 161–162 (B. Bailyn & J. Hench eds.1980). The dissent offers no evidence—none whatever—that the First Amendment's unqualified text was originally understood to exclude such associational speech from its protection.<sup>5</sup>

\*390 Historical evidence relating to the textually similar clause “the freedom of ... the press” also provides no support for the proposition that the First Amendment excludes conduct of artificial legal entities from the scope of its protection. The freedom of “the press” was widely understood to protect the publishing activities of individual editors and printers. See *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 360, 115 S.Ct. 1511, 131 L.Ed.2d 426 (1995) (THOMAS, J., concurring in judgment); see also *McConnell*, 540 U.S., at 252–253, 124 S.Ct. 619 (opinion of SCALIA, J.). But these individuals often acted through newspapers, which (much like corporations) had their own names, outlived the individuals who had founded them, could be bought and sold, were sometimes owned by more than one person, and were operated for profit. See generally F. \*928 Mott, *American Journalism: A History of Newspapers in the United States Through 250 Years* 3–164 (1941); J. Smith, *Freedom's Fetters* (1956). Their activities were not stripped of First Amendment protection simply because they were carried out under the banner of an artificial legal entity. And the notion which follows from the dissent's view, that modern newspapers, since they are incorporated, have free-speech rights only at the sufferance of Congress, boggles the mind.<sup>6</sup>

\*391 In passing, the dissent also claims that the Court's conception of corruption is unhistorical. The Framers “would have been appalled,” it says, by the evidence of corruption in the congressional findings supporting the Bipartisan Campaign Reform Act of 2002. *Post*, at 963. For this proposition, the dissent cites a law-review article arguing that “corruption” was originally understood to include “moral decay” and even actions taken by citizens in pursuit of private rather than public ends. Teachout, *The Anti-Corruption Principle*, 94 *Cornell L.Rev.* 341, 373, 378 (2009). It is hard to see how this has anything to do with what sort of corruption can be combated by restrictions on political speech. Moreover, if speech can be prohibited because, in the view of the Government, it leads to “moral decay” or does not serve “public ends,” then there is no limit to the Government's censorship power.

The dissent says that when the Framers “constitutionalized the right to free speech in the First Amendment, it was the free speech of individual Americans that they had in mind.” *Post* at 950. That is no doubt true. All the provisions of the Bill of Rights set forth the rights of individual \*392 men and women—not, for example, of trees or polar bears. But the individual person’s right to speak includes the right to speak *in association with other individual persons*. Surely the dissent does not believe that speech by the Republican Party or the Democratic Party can be censored because it is not the speech of “an individual American.” It is the speech of many individual Americans, who have associated in a common cause, giving the leadership of the party the right to speak on their behalf. The association of individuals in a business corporation is no different—or at least it cannot be denied the right to speak on the simplistic ground that it is not “an individual American.”<sup>7</sup>

\*\*929 But to return to, and summarize, my principal point, which is the conformity of today’s opinion with the original meaning of the First Amendment. The Amendment is written in terms of “speech,” not speakers. Its text offers no foothold \*393 for excluding any category of speaker, from single individuals to partnerships of individuals, to unincorporated associations of individuals, to incorporated associations of individuals—and the dissent offers no evidence about the original meaning of the text to support any such exclusion. We are therefore simply left with the question whether the speech at issue in this case is “speech” covered by the First Amendment. No one says otherwise. A documentary film critical of a potential Presidential candidate is core political speech, and its nature as such does not change simply because it was funded by a corporation. Nor does the character of that funding produce any reduction whatever in the “inherent worth of the speech” and “its capacity for informing the public,” *First Nat. Bank of Boston v. Bellotti*, 435 U.S. 765, 777, 98 S.Ct. 1407, 55 L.Ed.2d 707 (1978). Indeed, to exclude or impede corporate speech is to muzzle the principal agents of the modern free economy. We should celebrate rather than condemn the addition of this speech to the public debate.

Justice STEVENS, with whom Justice GINSBURG, Justice BREYER, and Justice SOTOMAYOR join, concurring in part and dissenting in part.

The real issue in this case concerns how, not if, the appellant may finance its electioneering. Citizens United is a wealthy nonprofit corporation that runs a political action committee (PAC) with millions of dollars in assets. Under the Bipartisan

Campaign Reform Act of 2002 (BCRA), it could have used those assets to televise and promote *Hillary: The Movie* wherever and whenever it wanted to. It also could have spent unrestricted sums to broadcast *Hillary* at any time other than the 30 days before the last primary election. Neither Citizens United’s nor any other corporation’s speech has been “banned,” *ante*, at 886. All that the parties dispute is whether Citizens United had a right to use the funds in its general treasury to pay for broadcasts during the 30-day period. The notion that the First Amendment \*394 dictates an affirmative answer to that question is, in my judgment, profoundly misguided. Even more misguided is the notion that the Court must \*\*930 rewrite the law relating to campaign expenditures by *for-profit* corporations and unions to decide this case.

The basic premise underlying the Court’s ruling is its iteration, and constant reiteration, of the proposition that the First Amendment bars regulatory distinctions based on a speaker’s identity, including its “identity” as a corporation. While that glittering generality has rhetorical appeal, it is not a correct statement of the law. Nor does it tell us when a corporation may engage in electioneering that some of its shareholders oppose. It does not even resolve the specific question whether Citizens United may be required to finance some of its messages with the money in its PAC. The conceit that corporations must be treated identically to natural persons in the political sphere is not only inaccurate but also inadequate to justify the Court’s disposition of this case.

In the context of election to public office, the distinction between corporate and human speakers is significant. Although they make enormous contributions to our society, corporations are not actually members of it. They cannot vote or run for office. Because they may be managed and controlled by nonresidents, their interests may conflict in fundamental respects with the interests of eligible voters. The financial resources, legal structure, and instrumental orientation of corporations raise legitimate concerns about their role in the electoral process. Our lawmakers have a compelling constitutional basis, if not also a democratic duty, to take measures designed to guard against the potentially deleterious effects of corporate spending in local and national races.

The majority’s approach to corporate electioneering marks a dramatic break from our past. Congress has placed special limitations on campaign spending by corporations ever since the passage of the Tillman Act in 1907, ch. 420, 34 Stat.



864. We have unanimously concluded that this “reflects a \*395 permissible assessment of the dangers posed by those entities to the electoral process,” *FEC v. National Right to Work Comm.*, 459 U.S. 197, 209, 103 S.Ct. 552, 74 L.Ed.2d 364 (1982) (*NRWC*), and have accepted the “legislative judgment that the special characteristics of the corporate structure require particularly careful regulation,” *id.*, at 209–210, 103 S.Ct. 552. The Court today rejects a century of history when it treats the distinction between corporate and individual campaign spending as an invidious novelty born of *Austin v. Michigan Chamber of Commerce*, 494 U.S. 652, 110 S.Ct. 1391, 108 L.Ed.2d 652 (1990). Relying largely on individual dissenting opinions, the majority blazes through our precedents, overruling or disavowing a body of case law including *FEC v. Wisconsin Right to Life, Inc.*, 551 U.S. 449, 127 S.Ct. 2652, 168 L.Ed.2d 329 (2007) (*WRTL*), *McConnell v. FEC*, 540 U.S. 93, 124 S.Ct. 619, 157 L.Ed.2d 491 (2003), *FEC v. Beaumont*, 539 U.S. 146, 123 S.Ct. 2200, 156 L.Ed.2d 179 (2003), *FEC v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238, 107 S.Ct. 616, 93 L.Ed.2d 539 (1986) (*MCFL*), *NRWC*, 459 U.S. 197, 103 S.Ct. 552, 74 L.Ed.2d 364, and *California Medical Assn. v. FEC*, 453 U.S. 182, 101 S.Ct. 2712, 69 L.Ed.2d 567 (1981).

In his landmark concurrence in *Ashwander v. TVA*, 297 U.S. 288, 346, 56 S.Ct. 466, 80 L.Ed. 688 (1936). Justice Brandeis stressed the importance of adhering to rules the Court has “developed ... for its own governance” when deciding constitutional questions. Because departures from those rules always enhance the risk of error, I shall review the background of this case in some detail before explaining why the Court’s analysis rests on a faulty understanding of *Austin* and *McConnell* and \*\*931 of our campaign finance jurisprudence more generally.<sup>1</sup> I regret the length of what follows, but the importance and novelty of the Court’s opinion require a full response. Although \*396 I concur in the Court’s decision to sustain BCRA’s disclosure provisions and join Part IV of its opinion, I emphatically dissent from its principal holding.

I

The Court’s ruling threatens to undermine the integrity of elected institutions across the Nation. The path it has taken to reach its outcome will, I fear, do damage to this institution. Before turning to the question whether to overrule *Austin* and part of *McConnell*, it is important to explain why the Court should not be deciding that question.

### Scope of the Case

The first reason is that the question was not properly brought before us. In declaring § 203 of BCRA facially unconstitutional on the ground that corporations’ electoral expenditures may not be regulated any more stringently than those of individuals, the majority decides this case on a basis relinquished below, not included in the questions presented to us by the litigants, and argued here only in response to the Court’s invitation. This procedure is unusual and inadvisable for a court.<sup>2</sup> Our colleagues’ suggestion that “we are asked to reconsider *Austin* and, in effect, *McConnell*,” *ante*, at 886, would be more accurate if rephrased to state that “we have asked ourselves” to reconsider those cases.

In the District Court, Citizens United initially raised a facial challenge to the constitutionality of § 203. App. 23a–24a. \*397 In its motion for summary judgment, however, Citizens United expressly abandoned its facial challenge, 1:07-cv-2240-RCL-RWR, Docket Entry No. 52, pp. 1–2 (May 16, 2008), and the parties stipulated to the dismissal of that claim, *id.* Nos. 53 (May 22, 2008), 54 (May 23, 2008), App. 6a. The District Court therefore resolved the case on alternative grounds,<sup>3</sup> and in its \*\*932 jurisdictional statement to this Court, Citizens United properly advised us that it was raising only “an as-applied challenge to the constitutionality of ... BCRA § 203.” Juris. Statement 5. The jurisdictional statement never so much as cited *Austin*, the key case the majority today overrules. And not one of the questions presented suggested that Citizens United was surreptitiously raising the facial challenge to § 203 that it previously agreed to dismiss. In fact, not one of those questions raised an issue based on Citizens United’s corporate status. Juris. Statement (i). Moreover, even in its merits briefing, when Citizens United injected its request to overrule *Austin*, it never sought a declaration that § 203 was facially unconstitutional as to all corporations and unions; instead it argued only that the statute could not be applied to it because it was “funded overwhelmingly by individuals.” Brief for Appellant 29; see also *id.* at 10, 12, 16, 28 (affirming “as applied” character of challenge to § 203); Tr. of Oral Arg. 4–9 (Mar. 24, 2009) (counsel \*398 for Citizens United conceding that § 203 could be applied to General Motors); *id.* at 55 (counsel for Citizens United stating that “we accept the Court’s decision in [*WRTL*]”).



"It is only in exceptional cases coming here from the federal courts that questions not pressed or passed upon below are reviewed," *Youakim v. Miller*, 425 U.S. 231, 234, 96 S.Ct. 1399, 47 L.Ed.2d 701 (1976) (*per curiam*) (quoting *Duignan v. United States*, 274 U.S. 195, 200, 47 S.Ct. 566, 71 L.Ed. 996 (1927)), and it is "only in the most exceptional cases" that we will consider issues outside the questions presented, *Stone v. Powell*, 428 U.S. 465, 481, n. 15, 96 S.Ct. 3037, 49 L.Ed.2d 1067 (1976). The appellant in this case did not so much as assert an exceptional circumstance, and one searches the majority opinion in vain for the mention of any. That is unsurprising, for none exists.

Setting the case for reargument was a constructive step, but it did not cure this fundamental problem. Essentially, five Justices were unhappy with the limited nature of the case before us, so they changed the case to give themselves an opportunity to change the law.

#### *As-Applied and Facial Challenges*

This Court has repeatedly emphasized in recent years that "[f]acial challenges are disfavored." *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442, 450, 128 S.Ct. 1184, 170 L.Ed.2d 151 (2008); see also *Ayotte v. Planned Parenthood of Northern New Eng.*, 546 U.S. 320, 329, 126 S.Ct. 961, 163 L.Ed.2d 812 (2006) ("[T]he 'normal rule' is that 'partial, rather than facial, invalidation is the required course,' such that a 'statute may ... be declared invalid to the extent that it reaches too far, but otherwise left intact'" (quoting *Brockett v. Spokane Arcades, Inc.*, 472 U.S. 491, 504, 105 S.Ct. 2794, 86 L.Ed.2d 394 (1985); alteration in original)). By declaring § 203 facially unconstitutional, our colleagues have turned an as-applied challenge into a facial challenge, in defiance of this principle.

This is not merely a technical defect in the Court's decision. The unnecessary resort to a facial inquiry "run[s] contrary \*399 to the fundamental principle of judicial \*\*933 restraint that courts should neither anticipate a question of constitutional law in advance of the necessity of deciding it nor formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied." *Washington State Grange*, 552 U.S., at 450, 128 S.Ct. 1184 (internal quotation marks omitted). Scanting that principle "threaten[s] to short circuit the democratic process by preventing laws embodying the will of the people from being implemented in a manner consistent with the Constitution." *Id.*, at 451, 128 S.Ct. 1184. These concerns

are heightened when judges overrule settled doctrine upon which the legislature has relied. The Court operates with a sledge hammer rather than a scalpel when it strikes down one of Congress' most significant efforts to regulate the role that corporations and unions play in electoral politics. It compounds the offense by implicitly striking down a great many state laws as well.

The problem goes still deeper, for the Court does all of this on the basis of pure speculation. Had *Citizens United* maintained a facial challenge, and thus argued that there are virtually no circumstances in which BCRA § 203 can be applied constitutionally, the parties could have developed, through the normal process of litigation, a record about the *actual* effects of § 203, its actual burdens and its actual benefits, on *all* manner of corporations and unions.<sup>4</sup> "Claims of facial invalidity often rest on speculation," and consequently "raise the risk of premature interpretation of statutes on the \*400 basis of factually barebones records." *Id.*, at 450, 128 S.Ct. 1184 (internal quotation marks omitted). In this case, the record is not simply incomplete or unsatisfactory; it is nonexistent. Congress crafted BCRA in response to a virtual mountain of research on the corruption that previous legislation had failed to avert. The Court now negates Congress' efforts without a shred of evidence on how § 203 or its state-law counterparts have been affecting any entity other than *Citizens United*.<sup>5</sup>

Faced with this gaping empirical hole, the majority throws up its hands. Were we to confine our inquiry to *Citizens United*'s as-applied challenge, it protests, we would commence an "extended" process of "draw[ing], and then redraw[ing], constitutional \*\*934 lines based on the particular media or technology used to disseminate political speech from a particular speaker." *Ante*, at 891. While tacitly acknowledging that some applications of § 203 might be found constitutional, the majority thus posits a future in which novel First Amendment standards must be devised on an ad hoc basis, and then leaps from this unfounded prediction to the unfounded conclusion that such complexity counsels the abandonment of all normal restraint. Yet it is a pervasive \*401 feature of regulatory systems that unanticipated events, such as new technologies, may raise some unanticipated difficulties at the margins. The fluid nature of electioneering communications does not make this case special. The fact that a Court can hypothesize situations in which a statute might, at some point down the line, pose some unforeseen as-applied problems, does not come close to meeting the standard for a facial challenge.<sup>6</sup>

Decision No. 78040

The majority proposes several other justifications for the sweep of its ruling. It suggests that a facial ruling is necessary because, if the Court were to continue on its normal course of resolving as-applied challenges as they present themselves, that process would itself run afoul of the First Amendment. See, e.g., *ante*, at 890 (as-applied review process “would raise questions as to the courts’ own lawful authority”); *ibid.* (“Courts, too, are bound by the First Amendment”). This suggestion is perplexing. Our colleagues elsewhere trumpet “our duty ‘to say what the law is,’ ” even when our predecessors on the bench and our counterparts in Congress have interpreted the law differently. *Ante*, at 913 (quoting *Marbury v. Madison*, 1 Cranch 137, 177, 2 L.Ed. 60 (1803)). We do not typically say what the law *is not* as a hedge against future judicial error. The possibility that later courts will misapply a constitutional provision does not give \*402 us a basis for premitting litigation relating to that provision.<sup>7</sup>

The majority suggests that a facial ruling is necessary because anything less would chill too much protected speech. See *ante*, at 890 – 891, 892, 894 – 897. In addition to begging the question what types of corporate spending are constitutionally protected and to what extent, this claim rests on the assertion that some significant number of corporations have \*\*935 been cowed into quiescence by FEC “ ‘censor[ship].’ ” *Ante*, at 895 – 896. That assertion is unsubstantiated, and it is hard to square with practical experience. It is particularly hard to square with the legal landscape following *WRTL*, which held that a corporate communication could be regulated under § 203 only if it was “susceptible of *no* reasonable interpretation other than as an appeal to vote for or against a specific candidate.” 551 U.S., at 470, 127 S.Ct. 2652 (opinion of ROBERTS, C.J.) (emphasis added). The whole point of this test was to make § 203 as simple and speech-protective as possible. The Court does not explain how, in the span of a single election cycle, it has determined THE CHIEF JUSTICE’s project to be a failure. In this respect, too, the majority’s critique of line-drawing collapses into a critique of the as-applied review method generally.<sup>8</sup>

\*403 The majority suggests that, even though it expressly dismissed its facial challenge, Citizens United nevertheless preserved it—not as a freestanding “claim,” but as a potential argument in support of “a claim that the FEC has violated its First Amendment right to free speech.” *Ante*, at 892 – 893; see also *ante*, at 919 (ROBERTS, C.J., concurring) (describing Citizens United’s claim as: “[T]he Act violates the First Amendment”). By this novel logic, virtually any

submission could be reconceptualized as “a claim that the Government has violated my rights,” and it would then be available to the Court to entertain any conceivable issue that might be relevant to that claim’s disposition. Not only the as-applied/facial distinction, but the basic relationship between litigants and courts, would be upended if the latter had free rein to construe the former’s claims at such high levels of generality. There would be no need for plaintiffs to argue their case; they could just cite the constitutional provisions they think relevant, and leave the rest to us.<sup>9</sup>

Finally, the majority suggests that though the scope of Citizens United’s claim may be narrow, a facial ruling is necessary as a matter of remedy. Relying on a law review article, it asserts that Citizens United’s dismissal of the facial challenge does not prevent us “ ‘from making broader pronouncements of invalidity in properly “as-applied” cases.’ ” *Ante*, at 893 (quoting Fallon, \*404 As-Applied and Facial Challenges and Third-Party Standing, 113 Harv. L.Rev. 1321, 1339 (2000) (hereinafter Fallon)); accord, *ante*, at 919 (opinion of ROBERTS, C.J.) (“Regardless whether we label Citizens United’s claim a ‘facial’ or ‘as-applied’ challenge, the consequences of the Court’s decision are the same”). The majority is on firmer conceptual ground here. Yet even if one accepts this part of Professor Fallon’s thesis, one must proceed \*\*936 to ask *which* as-applied challenges, if successful, will “properly” invite or entail invalidation of the underlying statute.<sup>10</sup> The paradigmatic case is a judicial determination that the legislature acted with an impermissible purpose in enacting a provision, as this carries the necessary implication that all future as-applied challenges to the provision must prevail. See Fallon 1339–1340.

Citizens United’s as-applied challenge was not of this sort. Until this Court ordered reargument, its contention was that BCRA § 203 could not lawfully be applied to a feature-length video-on-demand film (such as *Hillary*) or to a nonprofit corporation exempt from taxation under 26 U.S.C. § 501(c)(4)<sup>11</sup> and funded overwhelmingly by individuals (such as itself). See Brief for Appellant 16–41. Success on either of these claims would not necessarily carry any implications for the validity of § 203 as applied to other types of broadcasts, other \*405 types of corporations, or unions. It certainly would not invalidate the statute as applied to a large for-profit corporation. See Tr. of Oral Arg. 8, 4 (Mar. 24, 2009) (counsel for Citizens United emphasizing that appellant is “a small, nonprofit organization, which is very much like [an *MCFE* corporation],” and affirming that its argument “definitely would not be the same” if *Hillary* were distributed by General

Decision No. 78040

Motors).<sup>12</sup> There is no legitimate basis for resurrecting a facial challenge that dropped out of this case 20 months ago.

### *Narrower Grounds*

It is all the more distressing that our colleagues have manufactured a facial challenge, because the parties have advanced numerous ways to resolve the case that would facilitate electioneering by nonprofit advocacy corporations such as Citizens \*937 United, without toppling statutes and precedents. Which is to say, the majority has transgressed yet another “cardinal” principle of the judicial process: “[I]f it is not necessary to decide more, it is necessary not to decide more.” \*406 *PDK Labs. Inc. v. Drug Enforcement Admin.*, 362 F.3d 786, 799 (C.A.D.C.2004) (Roberts, J., concurring in part and concurring in judgment).

Consider just three of the narrower grounds of decision that the majority has bypassed. First, the Court could have ruled, on statutory grounds, that a feature-length film distributed through video-on-demand does not qualify as an “electioneering communication” under § 203 of BCRA, 2 U.S.C. § 441b. BCRA defines that term to encompass certain communications transmitted by “broadcast, cable, or satellite.” § 434(f)(3)(A). When Congress was developing BCRA, the video-on-demand medium was still in its infancy, and legislators were focused on a very different sort of programming: short advertisements run on television or radio. See *McConnell*, 540 U.S., at 207, 124 S.Ct. 619. The sponsors of BCRA acknowledge that the FEC’s implementing regulations do not clearly apply to video-on-demand transmissions. See Brief for Senator John McCain et al. as *Amici Curiae* 17–18. In light of this ambiguity, the distinctive characteristics of video-on-demand, and “[t]he elementary rule ... that every reasonable construction must be resorted to, in order to save a statute from unconstitutionality,” *Hooper v. California*, 155 U.S. 648, 657, 15 S.Ct. 207, 39 L.Ed. 297 (1895), the Court could have reasonably ruled that § 203 does not apply to *Hillary*.<sup>13</sup>

Second, the Court could have expanded the *MCFL* exemption to cover § 501(c)(4) nonprofits that accept only a *de minimis* amount of money from for-profit corporations. Citizens United professes to be such a group: Its brief says it “is funded predominantly by donations from individuals who support [its] ideological message.” Brief for Appellant 5. Numerous Courts of Appeals have held that *de minimis* business support does not, in itself, remove an otherwise \*407 qualifying

organization from the ambit of *MCFL*.<sup>14</sup> This Court could have simply followed their lead.<sup>15</sup>

Finally, let us not forget Citizens United’s as-applied constitutional challenge. \*\*938 Precisely because Citizens United looks so much like the *MCFL* organizations we have exempted from regulation, while a feature-length video-on-demand film looks so unlike the types of electoral advocacy Congress has found deserving of regulation, this challenge is a substantial one. As the appellant’s own arguments show, the Court could have easily limited the breadth of its constitutional holding had it declined to adopt the novel notion that speakers and speech acts must always be treated identically—and always spared expenditures restrictions—in the political realm. Yet the Court nonetheless turns its back on the as-applied review process that has been a staple of campaign finance litigation since \*408 *Buckley v. Valeo*, 424 U.S. 1, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976) (*per curiam*), and that was affirmed and expanded just two Terms ago in *WRTL*, 551 U.S. 449, 127 S.Ct. 2652, 168 L.Ed.2d 329.

This brief tour of alternative grounds on which the case could have been decided is not meant to show that any of these grounds is ideal, though each is perfectly “valid,” *ante*, at 892 (majority opinion).<sup>16</sup> It is meant to show that there were principled, narrower paths that a Court that was serious about judicial restraint could have taken. There was also the straightforward path: applying *Austin* and *McConnell*, just as the District Court did in holding that the funding of Citizens United’s film can be regulated under them. The only thing preventing the majority from affirming the District Court, or adopting a narrower ground that would retain *Austin*, is its disdain for *Austin*.

## II

The final principle of judicial process that the majority violates is the most transparent: *stare decisis*. I am not an absolutist when it comes to *stare decisis*, in the campaign finance area or in any other. No one is. But if this principle is to do any meaningful work in supporting the rule of law, it must at least demand a significant justification, beyond the preferences of five Justices, for overturning settled doctrine. “[A] decision to overrule should rest on some special reason \*409 over and above the belief that a prior case was wrongly decided.” *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833, 864, 112 S.Ct. 2791, 120 L.Ed.2d 674 (1992).

No such justification exists in this case, and to the contrary there are powerful prudential reasons to keep faith with our precedents.<sup>17</sup>

The Court's central argument for why *stare decisis* ought to be trumped is that it does not like *Austin*. The opinion "was not well reasoned," our colleagues assert, and it conflicts with First Amendment \*\*939 principles. *Ante*, at 912. This, of course, is the Court's merits argument, the many defects in which we will soon consider. I am perfectly willing to concede that if one of our precedents were dead wrong in its reasoning or irreconcilable with the rest of our doctrine, there would be a compelling basis for revisiting it. But neither is true of *Austin*, as I explain at length in Parts III and IV, *infra*, at 942 – 978, and restating a merits argument with additional vigor does not give it extra weight in the *stare decisis* calculus.

Perhaps in recognition of this point, the Court supplements its merits case with a smattering of assertions. The Court proclaims that "*Austin* is undermined by experience since its announcement." *Ante*, at 912. This is a curious claim to make in a case that lacks a developed record. The majority has no empirical evidence with which to substantiate the claim; we just have its *ipse dixit* that the real world has not been kind to *Austin*. Nor does the majority bother to specify in what sense *Austin* has been "undermined." Instead it treats the reader to a string of non sequiturs: "Our Nation's speech dynamic is changing," *ante*, at 912; "[s]peakers have become adept at presenting citizens with sound bites, talking points, and scripted messages," *ibid.*; "[c]orporations ... do not have monolithic views," *ibid.* How any \*410 of these ruminations weakens the force of *stare decisis* escapes my comprehension.<sup>18</sup>

The majority also contends that the Government's hesitation to rely on *Austin*'s antidistortion rationale "diminishe[s]" "the principle of adhering to that precedent." *Ante*, at 912; see also *ante*, at 923 (opinion of ROBERTS, C.J.) (Government's litigating position is "most importan[t]" factor undermining *Austin*). Why it diminishes the value of *stare decisis* is left unexplained. We have never thought fit to overrule a precedent because a litigant has taken any particular tack. Nor should we. Our decisions can often be defended on multiple grounds, and a litigant may have strategic or case-specific reasons for emphasizing only a subset of them. Members of the public, moreover, often rely on our bottom-line holdings far more than our precise legal arguments; surely this is true for the legislatures that have been regulating corporate electioneering since *Austin*. The task of evaluating

the continued viability of precedents falls to this Court, not to the parties.<sup>19</sup>

\*\*940 \*411 Although the majority opinion spends several pages making these surprising arguments, it says almost nothing about the standard considerations we have used to determine *stare decisis* value, such as the antiquity of the precedent, the workability of its legal rule, and the reliance interests at stake. It is also conspicuously silent about *McConnell*, even though the *McConnell* Court's decision to uphold BCRA § 203 relied not only on the antidistortion logic of *Austin* but also on the statute's historical pedigree, see, e.g., 540 U.S., at 115–132, 223–224, 124 S.Ct. 619, and the need to preserve the integrity of federal campaigns, see *id.*, at 126–129, 205–208, and n. 88, 124 S.Ct. 619.

We have recognized that "[s]tare decisis has special force when legislators or citizens 'have acted in reliance on a previous decision, for in this instance overruling the decision would dislodge settled rights and expectations or require an extensive legislative response.'" *Hubbard v. United States*, 514 U.S. 695, 714, 115 S.Ct. 1754, 131 L.Ed.2d 779 (1995) (plurality opinion) (quoting *Hilton v. South Carolina Public Railways Comm'n*, 502 U.S. 197, 202, 112 S.Ct. 560, 116 L.Ed.2d 560 (1991)). *Stare decisis* protects not only personal rights involving property or contract but also the ability of the elected branches to shape their laws in an effective and coherent fashion. Today's decision takes away a power that we have long permitted these branches to exercise. State legislatures have relied on their authority to regulate corporate electioneering, confirmed in *Austin*, for more than a century.<sup>20</sup> The Federal Congress has relied on this authority for a comparable stretch of time, and it specifically relied on *Austin* throughout the years it spent developing and debating \*412 BCRA. The total record it compiled was 100,000 pages long.<sup>21</sup> Pulling out the rug beneath Congress after affirming the constitutionality of § 203 six years ago shows great disrespect for a coequal branch.

By removing one of its central components, today's ruling makes a hash out of BCRA's "delicate and interconnected regulatory scheme." *McConnell*, 540 U.S., at 172, 124 S.Ct. 619. Consider just one example of the distortions that will follow: Political parties are barred under BCRA from soliciting or spending "soft money," funds that are not subject to the statute's disclosure requirements or its source and amount limitations. 2 U.S.C. § 441i; *McConnell*, 540 U.S., at 122–126, 124 S.Ct. 619. Going forward, corporations and unions will be free to spend as much general treasury money

Decision No. 78040



as they wish on ads that support or attack specific candidates, whereas national parties will not be able to spend a dime of soft money on ads of any kind. The Court's ruling thus dramatically enhances the role of corporations and unions—and the narrow interests they represent—vis-à-vis the role of political parties—and the broad coalitions they represent—in determining who will hold public office.<sup>22</sup>

Beyond the reliance interests at stake, the other *stare decisis* factors also cut against the Court. Considerations of antiquity \*941 are significant for similar reasons. *McConnell* is only six years old, but *Austin* has been on the books for two decades, and many of the statutes called into question by today's opinion have been on the books for a half century or more. The Court points to no intervening change in circumstances that warrants revisiting *Austin*. Certainly nothing \*413 relevant has changed since we decided *WRTL* two Terms ago. And the Court gives no reason to think that *Austin* and *McConnell* are unworkable.

In fact, no one has argued to us that *Austin*'s rule has proved impracticable, and not a single for-profit corporation, union, or State has asked us to overrule it. Quite to the contrary, leading groups representing the business community,<sup>23</sup> organized labor,<sup>24</sup> and the nonprofit sector,<sup>25</sup> together with more than half of the States,<sup>26</sup> urge that we preserve *Austin*. As for *McConnell*, the portions of BCRA it upheld may be prolix, but all three branches of Government have worked to make § 203 as user-friendly as possible. For instance, Congress established a special mechanism for expedited review of constitutional challenges, see note following 2 U.S.C. § 437h; the FEC has established a standardized process, with clearly defined safe harbors, for corporations to claim that a particular electioneering communication is permissible under *WRTL*, see 11 CFR § 114.15 (2009);<sup>27</sup> and, as noted above, THE CHIEF JUSTICE crafted his controlling opinion in *WRTL* with the express goal of maximizing clarity and administrability, 551 U.S., at 469–470, 473–474, 127 S.Ct. 2652. The case for *stare decisis* may be bolstered, we have said, when \*414 subsequent rulings “have reduced the impact” of a precedent “while reaffirming the decision's core ruling.” *Dickerson v. United States*, 530 U.S. 428, 443, 120 S.Ct. 2326, 147 L.Ed.2d 405 (2000).<sup>28</sup>

In the end, the Court's rejection of *Austin* and *McConnell* comes down to nothing more than its disagreement with their results. \*942 Virtually every one of its arguments was made and rejected in those cases, and the majority opinion is

essentially an amalgamation of resuscitated dissents. The only relevant thing that has changed since *Austin* and *McConnell* is the composition of this Court. Today's ruling thus strikes at the vitals of *stare decisis*: “the means by which we ensure that the law will not merely change erratically, but will develop in a principled and intelligible fashion” that “permits society to presume that bedrock principles are founded in the law rather than in the proclivities of individuals.” *Vasquez v. Hillery*, 474 U.S. 254, 265, 106 S.Ct. 617, 88 L.Ed.2d 598 (1986).

### III

The novelty of the Court's procedural dereliction and its approach to *stare decisis* is matched by the novelty of its ruling on the merits. The ruling rests on several premises. First, the Court claims that *Austin* and *McConnell* have “banned” corporate speech. Second, it claims that the First Amendment precludes regulatory distinctions based on speaker identity, including the speaker's identity as a corporation. \*415 Third, it claims that *Austin* and *McConnell* were radical outliers in our First Amendment tradition and our campaign finance jurisprudence. Each of these claims is wrong.

#### *The So-Called “Ban”*

Pervading the Court's analysis is the ominous image of a “categorical ba[n]” on corporate speech. *Ante*, at 910. Indeed, the majority invokes the specter of a “ban” on nearly every page of its opinion. *Ante*, at 886 – 887, 889, 891 – 892, 894, 896 – 898, 900 – 907, 909 – 912, 915, 916. This characterization is highly misleading, and needs to be corrected.

In fact it already has been. Our cases have repeatedly pointed out that, “[c]ontrary to the [majority's] critical assumptions,” the statutes upheld in *Austin* and *McConnell* do “not impose an *absolute* ban on all forms of corporate political spending.” *Austin*, 494 U.S., at 660, 110 S.Ct. 1391; see also *McConnell*, 540 U.S., at 203–204, 124 S.Ct. 619; *Beaumont*, 539 U.S., at 162–163, 123 S.Ct. 2200. For starters, both statutes provide exemptions for PACs, separate segregated funds established by a corporation for political purposes. See 2 U.S.C. § 441b(b) (2)(C); Mich. Comp. Laws Ann. § 169.255 (West 2005). “The ability to form and administer separate segregated funds,” we observed in *McConnell*, “has provided corporations and unions with a constitutionally sufficient opportunity to engage



in express advocacy. That has been this Court's unanimous view." 540 U.S., at 203, 124 S.Ct. 619.

Under BCRA, any corporation's "stockholders and their families and its executive or administrative personnel and their families" can pool their resources to finance electioneering communications. 2 U.S.C. § 441b(b)(4)(A) (i). A significant and growing number of corporations avail themselves of this option;<sup>29</sup> during the most recent election cycle, \*416 corporate and union PACs raised nearly a billion dollars.<sup>30</sup> \*943 Administering a PAC entails some administrative burden, but so does complying with the disclaimer, disclosure, and reporting requirements that the Court today upholds, see *ante*, at 914, and no one has suggested that the burden is severe for a sophisticated for-profit corporation. To the extent the majority is worried about this issue, it is important to keep in mind that we have no record to show how substantial the burden really is, just the majority's own unsupported factfinding, see *ante*, at 897 – 898. Like all other natural persons, every shareholder of every corporation remains entirely free under *Austin* and *McConnell* to do however much electioneering she pleases outside of the corporate form. The owners of a "mom & pop" store can simply place ads in their own names, rather than the store's. If ideologically aligned individuals wish to make unlimited expenditures through the corporate form, they may utilize an MCFL organization that has policies in place to avoid becoming a conduit for business or union interests. See *MCFL*, 479 U.S., at 263–264, 107 S.Ct. 616.

The laws upheld in *Austin* and *McConnell* leave open many additional avenues for corporations' political speech. Consider the statutory provision we are ostensibly evaluating in this case, BCRA § 203. It has no application to genuine issue advertising—a category of corporate speech Congress found to be far more substantial than election-related advertising, see *McConnell*, 540 U.S., at 207, 124 S.Ct. 619—or to Internet, \*417 telephone, and print advocacy.<sup>31</sup> Like numerous statutes, it exempts media companies' news stories, commentaries, and editorials from its electioneering restrictions, in recognition of the unique role played by the institutional press in sustaining public debate.<sup>32</sup> See 2 U.S.C. § 434(f)(3)(B)(i); *McConnell*, 540 U.S., at 208–209, 124 S.Ct. 619; see also *Austin*, 494 U.S., at 666–668, 110 S.Ct. 1391. It also allows corporations to spend unlimited sums on political communications with their executives and shareholders, § 441b(b)(2)(A); 11 CFR § 114.3(a)(1), to fund additional PAC activity through trade associations, 2 U.S.C. § 441b(b)(4)(D),

to distribute voting guides and voting records, \*\*944 11 CFR §§ 114.4(c)(4)–(5), to underwrite voter registration and voter turnout activities, § 114.3(c)(4); § 114.4(c)(2), to host fundraising events for candidates within certain limits, \*418 § 114.4(c); § 114.2(f)(2), and to publicly endorse candidates through a press release and press conference, § 114.4(c)(6).

At the time *Citizens United* brought this lawsuit, the only types of speech that could be regulated under § 203 were: (1) broadcast, cable, or satellite communications;<sup>33</sup> (2) capable of reaching at least 50,000 persons in the relevant electorate;<sup>34</sup> (3) made within 30 days of a primary or 60 days of a general federal election;<sup>35</sup> (4) by a labor union or a non-MCFL nonmedia corporation;<sup>36</sup> (5) paid for with general treasury funds;<sup>37</sup> and (6) "susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate."<sup>38</sup> The category of communications meeting all of these criteria is not trivial, but the notion that corporate political speech has been "suppress[ed] ... altogether," *ante*, at 886, that corporations have been "exclud[ed] ... from the general public dialogue," *ante*, at 899, or that a work of fiction such as *Mr. Smith Goes to Washington* might be covered, *ante*, at 916–917, is nonsense.<sup>39</sup> Even the plaintiffs in *McConnell*, who had every incentive to depict BCRA as negatively as possible, declined to argue that § 203's prohibition on certain uses of general treasury funds amounts to a complete ban. See 540 U.S., at 204, 124 S.Ct. 619.

\*419 In many ways, then, § 203 functions as a source restriction or a time, place, and manner restriction. It applies in a viewpoint-neutral fashion to a narrow subset of advocacy messages about clearly identified candidates for federal office, made during discrete time periods through discrete channels. In the case at hand, all *Citizens United* needed to do to broadcast *Hillary* right before the primary was to abjure business contributions or use the funds in its PAC, which by its own account is "one of the most active conservative PACs in America," *Citizens United Political Victory Fund*, <http://www.cupvf.org/>.<sup>40</sup>

So let us be clear: Neither *Austin* nor *McConnell* held or implied that corporations may be silenced; the FEC is not a "censor"; and in the years since these \*\*945 cases were decided, corporations have continued to play a major role in the national dialogue. Laws such as § 203 target a class of communications that is especially likely to corrupt the political process, that is at least one degree removed from the

views of individual citizens, and that may not even reflect the views of those who pay for it. Such laws burden political speech, and that is always a serious matter, demanding careful scrutiny. But the majority's incessant talk of a "ban" aims at a straw man.

### *Identity-Based Distinctions*

The second pillar of the Court's opinion is its assertion that "the Government cannot restrict political speech based on the speaker's ... identity." *Ante*, at 902; accord, *ante*, at 886, 898, 900, 902 – 904, 912 – 913. \*420 The case on which it relies for this proposition is *First Nat. Bank of Boston v. Bellotti*, 435 U.S. 765, 98 S.Ct. 1407, 55 L.Ed.2d 707 (1978). As I shall explain, *infra*, at 958 – 960, the holding in that case was far narrower than the Court implies. Like its paeans to unfettered discourse, the Court's denunciation of identity-based distinctions may have rhetorical appeal but it obscures reality.

"Our jurisprudence over the past 216 years has rejected an absolutist interpretation" of the First Amendment. *WRTL*, 551 U.S., at 482, 127 S.Ct. 2652 (opinion of ROBERTS, C.J.). The First Amendment provides that "Congress shall make no law ... abridging the freedom of speech, or of the press." Apart perhaps from measures designed to protect the press, that text might seem to permit no distinctions of any kind. Yet in a variety of contexts, we have held that speech can be regulated differentially on account of the speaker's identity, when identity is understood in categorical or institutional terms. The Government routinely places special restrictions on the speech rights of students,<sup>41</sup> prisoners,<sup>42</sup> members of the Armed Forces,<sup>43</sup> foreigners,<sup>44</sup> and its own employees.<sup>45</sup> \*421 When such restrictions are justified by a legitimate governmental \*\*946 interest, they do not necessarily raise constitutional problems.<sup>46</sup> In contrast to the blanket rule that the majority espouses, our cases recognize that the Government's interests may be more or less compelling with respect to different classes of speakers,<sup>47</sup> cf. *Minneapolis Star & Tribune Co. v. Minnesota Comm'r of Revenue*, 460 U.S. 575, 585, 103 S.Ct. 1365, 75 L.Ed.2d 295 (1983) ("[D]ifferential treatment" is constitutionally suspect "unless justified by some special characteristic" of the regulated class of speakers (emphasis added)), and that the constitutional rights of certain categories of speakers, in certain contexts, "are not automatically coextensive with the rights" that are normally accorded to members of our society. \*422 *Morse v. Frederick*, 551 U.S. 393, 396–397, 404, 127 S.Ct. 2618, 168

L.Ed.2d 290 (2007) (quoting *Bethel School Dist. No. 403 v. Fraser*, 478 U.S. 675, 682, 106 S.Ct. 3159, 92 L.Ed.2d 549 (1986)).

The free speech guarantee thus does not render every other public interest an illegitimate basis for qualifying a speaker's autonomy; society could scarcely function if it did. It is fair to say that our First Amendment doctrine has "frowned on" certain identity-based distinctions, *Los Angeles Police Dept. v. United Reporting Publishing Corp.*, 528 U.S. 32, 47, n. 4, 120 S.Ct. 483, 145 L.Ed.2d 451 (1999) (STEVENS, J., dissenting), particularly those that may reflect invidious discrimination or preferential treatment of a politically powerful group. But it is simply incorrect to suggest that we have prohibited all legislative distinctions based on identity or content. Not even close.

The election context is distinctive in many ways, and the Court, of course, is right that the First Amendment closely guards political speech. But in this context, too, the authority of legislatures to enact viewpoint-neutral regulations based on content and identity is well settled. We have, for example, allowed state-run broadcasters to exclude independent candidates from televised debates. *Arkansas Ed. Television Comm'n v. Forbes*, 523 U.S. 666, 118 S.Ct. 1633, 140 L.Ed.2d 875 (1998).<sup>48</sup> We have upheld statutes that prohibit the distribution or display of campaign materials near a polling place. \*\*947 *Burson v. Freeman*, 504 U.S. 191, 112 S.Ct. 1846, 119 L.Ed.2d 5 (1992).<sup>49</sup> Although we have not reviewed \*423 them directly, we have never cast doubt on laws that place special restrictions on campaign spending by foreign nationals. See, e.g., 2 U.S.C. § 441e(a) (1). And we have consistently approved laws that bar Government employees, but not others, from contributing to or participating in political activities. See n. 45, *supra*. These statutes burden the political expression of one class of speakers, namely, civil servants. Yet we have sustained them on the basis of longstanding practice and Congress' reasoned judgment that certain regulations which leave "untouched full participation ... in political decisions at the ballot box," *Civil Service Comm'n v. Letter Carriers*, 413 U.S. 548, 556, 93 S.Ct. 2880, 37 L.Ed.2d 796 (1973) (internal quotation marks omitted), help ensure that public officials are "sufficiently free from improper influences," *id.*, at 564, 93 S.Ct. 2880, and that "confidence in the system of representative Government is not ... eroded to a disastrous extent," *id.*, at 565, 93 S.Ct. 2880.

The same logic applies to this case with additional force because it is the identity of corporations, rather than

individuals, that the Legislature has taken into account. As we have unanimously observed, legislatures are entitled to decide “that the special characteristics of the corporate structure require particularly careful regulation” in an electoral context. *NRWC*, 459 U.S., at 209–210, 103 S.Ct. 552.<sup>50</sup> Not only has the distinctive potential of corporations to corrupt the electoral process long been recognized, but within the area of campaign finance, corporate spending is also “furthest from the core of political expression, since corporations’ First Amendment speech and association interests are derived largely \*424 from those of their members and of the public in receiving information,” *Beaumont*, 539 U.S., at 161, n. 8, 123 S.Ct. 2200 (citation omitted). Campaign finance distinctions based on corporate identity tend to be less worrisome, in other words, because the “speakers” are not natural persons, much less members of our political community, and the governmental interests are of the highest order. Furthermore, when corporations, as a class, are distinguished from noncorporations, as a class, there is a lesser risk that regulatory distinctions will reflect invidious discrimination or political favoritism.

If taken seriously, our colleagues’ assumption that the identity of a speaker has *no* relevance to the Government’s ability to regulate political speech would lead to some remarkable conclusions. Such an assumption would have accorded the propaganda broadcasts to our troops by “Tokyo Rose” during World War II the same protection as speech by Allied commanders. More pertinently, it would appear to afford the same protection to multinational corporations \*\*948 controlled by foreigners as to individual Americans: To do otherwise, after all, could “ ‘enhance the relative voice’ ” of some (*i.e.*, humans) over others (*i.e.*, nonhumans). *Ante*, at 904 (quoting *Buckley*, 424 U.S., at 49, 96 S.Ct. 612).<sup>51</sup> Under the \*425 majority’s view, I suppose it may be a First Amendment problem that corporations are not permitted to vote, given that voting is, among other things, a form of speech.<sup>52</sup>

In short, the Court dramatically overstates its critique of identity-based distinctions, without ever explaining why corporate identity demands the same treatment as individual identity. Only the most wooden approach to the First Amendment could justify the unprecedented line it seeks to draw.

*Our First Amendment Tradition*

A third fulcrum of the Court’s opinion is the idea that *Austin* and *McConnell* are radical outliers, “aberration[s],” in our First Amendment tradition. *Ante*, at 907; see also *ante*, at 910, 916 – 917 (professing fidelity to “our law and our tradition”). The Court has it exactly backwards. It is today’s holding that is the radical departure from what had been settled First Amendment law. To see why, it is useful to take a long view.

### 1. *Original Understandings*

Let us start from the beginning. The Court invokes “ancient First Amendment principles,” *ante*, at 886 (internal quotation marks omitted), and original understandings, *ante*, at 906 – 907, to defend today’s ruling, yet it makes only a perfunctory attempt to ground its analysis in the principles or \*426 understandings of those who drafted and ratified the Amendment. Perhaps this is because there is not a scintilla of evidence to support the notion that anyone believed it would preclude regulatory distinctions based on the corporate form. To the extent that the Framers’ views are discernible and relevant to the disposition of this case, they would appear to cut strongly against the majority’s position.

This is not only because the Framers and their contemporaries conceived of speech more narrowly than we now think of it, see \*\*949 Bork, *Neutral Principles and Some First Amendment Problems*, 47 Ind. L.J. 1, 22 (1971), but also because they held very different views about the nature of the First Amendment right and the role of corporations in society. Those few corporations that existed at the founding were authorized by grant of a special legislative charter.<sup>53</sup> Corporate sponsors would petition the legislature, and the legislature, if amenable, would issue a charter that specified the corporation’s powers and purposes and “authoritatively fixed \*427 the scope and content of corporate organization,” including “the internal structure of the corporation.” J. Hurst, *The Legitimacy of the Business Corporation in the Law of the United States 1780–1970*, pp. 15–16 (1970) (reprinted 2004). Corporations were created, supervised, and conceptualized as quasi-public entities, “designed to serve a social function for the state.” Handlin & Handlin, *Origins of the American Business Corporation*, 5 J. Econ. Hist. 1, 22 (1945). It was “assumed that [they] were legally privileged organizations that had to be closely scrutinized by the legislature because their purposes had to be made consistent with public welfare.” R. Seavoy, *Origins of the American Business Corporation, 1784–1855*, p. 5 (1982).

The individualized charter mode of incorporation reflected the “cloud of disfavor under which corporations labored” in the early years of this Nation. 1 W. Fletcher, *Cyclopedia of the Law of Corporations* § 2, p. 8 (rev. ed.2006); see also *Louis K. Liggett Co. v. Lee*, 288 U.S. 517, 548–549, 53 S.Ct. 481, 77 L.Ed. 929 (1933) (Brandeis, J., dissenting) (discussing fears of the “evils” of business corporations); L. Friedman, *A History of American Law* 194 (2d ed.1985) (“The word ‘soulless’ constantly recurs in debates over corporations.... Corporations, it was feared, could concentrate the worst urges of whole groups of men”). Thomas Jefferson famously fretted that corporations would subvert the Republic.<sup>54</sup> General incorporation statutes, and widespread acceptance of business corporations as socially useful actors, did not emerge until the 1800’s. See Hansmann & Kraakman, *The End of History for Corporate Law*, 89 Geo. L.J. 439, 440 (2001) (hereinafter Hansmann & Kraakman) (“[A]ll general business corporation statutes appear to date from well after 1800”).

\*428 The Framers thus took it as a given that corporations could be comprehensively \*\*950 regulated in the service of the public welfare. Unlike our colleagues, they had little trouble distinguishing corporations from human beings, and when they constitutionalized the right to free speech in the First Amendment, it was the free speech of individual Americans that they had in mind.<sup>55</sup> While individuals might join together to exercise their speech rights, business corporations, at least, were plainly not seen as facilitating such associational or expressive ends. Even “the notion that business corporations could invoke the First Amendment would probably have been quite a novelty,” given that “at the time, the legitimacy of every corporate activity was thought to rest entirely in a concession of the sovereign.” Shelledy, *Autonomy, Debate, and Corporate Speech*, 18 Hastings Const. L.Q. 541, 578 (1991); cf. *Trustees of Dartmouth College v. Woodward*, 4 Wheat. 518, 636, 4 L.Ed. 629 (1819) (Marshall, \*429 C.J.) (“A corporation is an artificial being, invisible, intangible, and existing only in contemplation of law. Being the mere creature of law, it possesses only those properties which the charter of its creation confers upon it”); Eule, *Promoting Speaker Diversity: Austin and Metro Broadcasting*, 1990 S.Ct. Rev. 105, 129 (“The framers of the First Amendment could scarcely have anticipated its application to the corporation form. That, of course, ought not to be dispositive. What is compelling, however, is an understanding of who was supposed to be the beneficiary of the free speech guaranty—the individual”). In light of these background practices and understandings, it seems to me implausible that the Framers believed “the freedom of

speech” would extend equally to all corporate speakers, much less that it would preclude legislatures from taking limited measures to guard against corporate capture of elections.

The Court observes that the Framers drew on diverse intellectual sources, communicated through newspapers, and aimed to provide greater freedom of speech than had existed in England. *Ante*, at 906. From these (accurate) observations, the Court concludes that “[t]he First Amendment was certainly not understood to condone the suppression of political speech in society’s most salient media.” *Ibid*. This conclusion is far from certain, given that many historians believe the Framers were focused on prior restraints on publication and did not understand the First Amendment to “prevent the subsequent punishment of such [publications] as may be deemed contrary to the public welfare.” \*\*951 *Near v. Minnesota ex rel. Olson*, 283 U.S. 697, 714, 51 S.Ct. 625, 75 L.Ed. 1357 (1931) (internal quotation marks omitted). Yet, even if the majority’s conclusion were correct, it would tell us only that the First Amendment was understood to protect political speech *in* certain media. It would tell us little about whether the Amendment was understood to protect general treasury electioneering expenditures *by* corporations, *and to what extent*.

\*430 As a matter of original expectations, then, it seems absurd to think that the First Amendment prohibits legislatures from taking into account the corporate identity of a sponsor of electoral advocacy. As a matter of original meaning, it likewise seems baseless—unless one evaluates the First Amendment’s “principles,” *ante*, at 886, 912, or its “purpose,” *ante*, at 919–920 (opinion of ROBERTS, C.J.), at such a high level of generality that the historical understandings of the Amendment cease to be a meaningful constraint on the judicial task. This case sheds a revelatory light on the assumption of some that an impartial judge’s application of an originalist methodology is likely to yield more determinate answers, or to play a more decisive role in the decisional process, than his or her views about sound policy.

Justice SCALIA criticizes the foregoing discussion for failing to adduce statements from the founding era showing that corporations were understood to be excluded from the First Amendment’s free speech guarantee. *Ante*, at 925–926, 929. Of course, Justice SCALIA adduces no statements to suggest the contrary proposition, or even to suggest that the contrary proposition better reflects the kind of right that the drafters and ratifiers of the Free Speech Clause thought



they were enshrining. Although Justice SCALIA makes a perfectly sensible argument that an individual's right to speak entails a right to speak with others for a common cause, cf. *MCFL*, 479 U.S. 238, 107 S.Ct. 616, 93 L.Ed.2d 539, he does not explain why those two rights must be precisely identical, or why that principle applies to electioneering by corporations that serve no "common cause." *Ante*, at 928. Nothing in his account dislodges my basic point that members of the founding generation held a cautious view of corporate power and a narrow view of corporate rights (not that they "despised" corporations, *ante*, at 925), and that they conceptualized speech in individualistic terms. If no prominent Framers bothered to articulate that corporate speech would have lesser status than individual speech, that may well be because the contrary proposition—if \*431 not also the very notion of "corporate speech"—was inconceivable.<sup>56</sup>

Justice SCALIA also emphasizes the unqualified nature of the First Amendment text. *Ante*, at 925, 928 – 929. Yet he would seemingly read out the Free Press Clause: How else could he claim that my purported views on newspapers must track my views on corporations generally? *Ante*, at 927.<sup>57</sup> Like virtually all modern lawyers, Justice \*\*952 SCALIA presumably believes that the First Amendment restricts the Executive, even though its language refers to Congress alone. In any event, the text only leads us back to the questions who or what is guaranteed "the freedom of speech," and, just as critically, what that freedom consists of and under what circumstances it may be limited. Justice SCALIA appears to believe that because corporations are created and utilized by individuals, it follows (as night the day) that their electioneering must be equally protected by the First Amendment \*432 and equally immunized from expenditure limits. See *ante*, at 928 – 929. That conclusion certainly does not follow as a logical matter, and Justice SCALIA fails to explain why the original public meaning leads it to follow as a matter of interpretation.

The truth is we cannot be certain how a law such as BCRA § 203 meshes with the original meaning of the First Amendment.<sup>58</sup> I have given several reasons why I believe the Constitution would have been understood then, and ought to be understood now, to permit reasonable restrictions on corporate electioneering, and I will give many more reasons in the pages to come. The Court enlists the Framers in its defense without seriously grappling with their understandings of corporations or the free speech right, or with the republican principles that underlay those understandings.

In fairness, our campaign finance jurisprudence has never attended very closely to the views of the Framers, see *Randall v. Sorrell*, 548 U.S. 230, 280, 126 S.Ct. 2479, 165 L.Ed.2d 482 (2006) (STEVENS, J., dissenting), whose political universe differed profoundly from that of today. We have long since held that corporations are covered by the First Amendment, and many legal scholars have long since rejected the concession theory of the corporation. But "historical context is usually relevant," *ibid.* (internal quotation marks omitted), and in light of the Court's effort to cast itself as guardian of ancient values, it pays to remember that nothing in our constitutional history dictates today's outcome. To the contrary, this history helps illuminate just how extraordinarily dissonant the decision is.

## 2. Legislative and Judicial Interpretation

A century of more recent history puts to rest any notion that today's ruling is faithful to our First Amendment tradition.

\*433 At the federal level, the express distinction between corporate and individual political spending on elections stretches back to 1907, when Congress passed the Tillman Act, ch. 420, 34 Stat. 864, banning all corporate contributions to candidates. The Senate Report on the legislation observed that "[t]he evils of the use of [corporate] money in connection with political elections are so generally recognized that the committee deems it unnecessary to make any \*\*953 argument in favor of the general purpose of this measure. It is in the interest of good government and calculated to promote purity in the selection of public officials." S.Rep. No. 3056, 59th Cong., 1st Sess., 2 (1906). President Roosevelt, in his 1905 annual message to Congress, declared:

" 'All contributions by corporations to any political committee or for any political purpose should be forbidden by law; directors should not be permitted to use stockholders' money for such purposes; and, moreover, a prohibition of this kind would be, as far as it went, an effective method of stopping the evils aimed at in corrupt practices acts.' " *United States v. Automobile Workers*, 352 U.S. 567, 572, 77 S.Ct. 529, 1 L.Ed.2d 563 (1957) (quoting 40 Cong. Rec. 96).

The Court has surveyed the history leading up to the Tillman Act several times, see *WRTL*, 551 U.S., at 508–510, 127 S.Ct. 2652 (Souter, J., dissenting); *McConnell*, 540 U.S., at 115, 124 S.Ct. 619; *Automobile Workers*, 352 U.S., at 570–575, 77 S.Ct. 529, and I will refrain from doing so again. It is enough



to say that the Act was primarily driven by two pressing concerns: first, the enormous power corporations had come to wield in federal elections, with the accompanying threat of both actual corruption and a public perception of corruption; and second, a respect for the interest of shareholders and members in preventing the use of their money to support candidates they opposed. See *ibid.*; *United States v. CIO*, 335 U.S. 106, 113, 68 S.Ct. 1349, 92 L.Ed. 1849 (1948); Winkler, "Other People's Money": Corporations, Agency Costs, and Campaign Finance Law, 92 Geo. L.J. 871 (2004).

\*434 Over the years, the limitations on corporate political spending have been modified in a number of ways, as Congress responded to changes in the American economy and political practices that threatened to displace the commonweal. Justice Souter recently traced these developments at length.<sup>59</sup> *WRTL*, 551 U.S., at 507–519, 127 S.Ct. 2652 (dissenting opinion); see also *McConnell*, 540 U.S., at 115–133, 124 S.Ct. 619; *McConnell*, 251 F.Supp.2d, at 188–205. The Taft–Hartley Act of 1947 is of special significance for this case. In that Act passed more than 60 years ago, Congress extended the prohibition on corporate support of candidates to cover not only direct contributions, but independent expenditures as well. Labor Management Relations Act, 1947, § 304, 61 Stat. 159. The bar on contributions “was being so narrowly construed” that corporations were easily able to defeat the purposes of the Act by supporting candidates through other means. *WRTL*, 551 U.S., at 511, 127 S.Ct. 2652 (Souter, J., dissenting) (citing S.Rep. No. 1, 80th Cong., 1st Sess., 38–39 (1947)).

Our colleagues emphasize that in two cases from the middle of the 20th century, several Justices wrote separately to criticize the expenditure restriction as applied to unions, even though the Court declined to pass on its constitutionality. *Ante*, at 900 – 901. Two features of these cases are of far greater relevance. First, those Justices were writing separately; which is to \*\*954 say, their position failed to command a majority. Prior to today, this was a fact we found significant \*435 in evaluating precedents. Second, each case in this line expressed support for the principle that corporate and union political speech financed with PAC funds, collected voluntarily from the organization's stockholders or members, receives greater protection than speech financed with general treasury funds.<sup>60</sup>

This principle was carried forward when Congress enacted comprehensive campaign finance reform in the Federal Election Campaign Act of 1971 (FECA), 86 Stat. 3, which

retained the restriction on using general treasury funds for contributions and expenditures, 2 U.S.C. § 441b(a). FECA \*436 codified the option for corporations and unions to create PACs to finance contributions and expenditures forbidden to the corporation or union itself. § 441b(b).

By the time Congress passed FECA in 1971, the bar on corporate contributions and expenditures had become such an accepted part of federal campaign finance regulation that when a large number of plaintiffs, including several nonprofit corporations, challenged virtually every aspect of FECA in *Buckley*, 424 U.S. 1, 96 S.Ct. 612, 46 L.Ed.2d 659, no one even bothered to argue that the bar as such was unconstitutional. *Buckley* famously (or infamously) distinguished direct contributions from independent expenditures, *id.*, at 58–59, 96 S.Ct. 612, but its silence on corporations only reinforced the understanding that corporate expenditures could be treated differently from individual expenditures. “Since our decision in *Buckley*, Congress' power to prohibit corporations and unions from using funds in their treasuries to finance advertisements expressly advocating the election or defeat of candidates in federal elections has been firmly embedded in our law.” *McConnell*, 540 U.S., at 203, 124 S.Ct. 619.

Thus, it was unremarkable, in a 1982 case holding that Congress could bar nonprofit corporations from soliciting nonmembers for PAC funds, that then-Justice Rehnquist wrote for a unanimous Court \*\*955 that Congress' “careful legislative adjustment of the federal electoral laws, in a cautious advance, step by step, to account for the particular legal and economic attributes of corporations ... warrants considerable deference,” and “reflects a permissible assessment of the dangers posed by those entities to the electoral process.” *NRWC*, 459 U.S., at 209, 103 S.Ct. 552 (internal quotation marks and citation omitted). “The governmental interest in preventing both actual corruption and the appearance of corruption of elected representatives has long been recognized,” the unanimous Court observed, “and there is no reason why it may not ... be accomplished by treating ... corporations ... differently from individuals.” *Id.*, at 210–211, 103 S.Ct. 552.

\*437 The corporate/individual distinction was not questioned by the Court's disposition, in 1986, of a challenge to the expenditure restriction as applied to a distinctive type of nonprofit corporation. In *MCFL*, 479 U.S. 238, 107 S.Ct. 616, 93 L.Ed.2d 539, we stated again “that ‘the special characteristics of the corporate structure require particularly

careful regulation,” *id.*, at 256, 107 S.Ct. 616 (quoting *NRWC*, 459 U.S., at 209–210, 103 S.Ct. 552), and again we acknowledged that the Government has a legitimate interest in “regulat[ing] the substantial aggregations of wealth amassed by the special advantages which go with the corporate form,” 479 U.S., at 257, 107 S.Ct. 616 (internal quotation marks omitted). Those aggregations can distort the “free trade in ideas” crucial to candidate elections, *ibid.* (internal quotation marks omitted), at the expense of members or shareholders who may disagree with the object of the expenditures, *id.*, at 260, 107 S.Ct. 616. What the Court held by a 5–to–4 vote was that a limited class of corporations must be allowed to use their general treasury funds for independent expenditures, because Congress’ interests in protecting shareholders and “restrict[ing] ‘the influence of political war chests funneled through the corporate form,’ ” *id.*, at 257, 107 S.Ct. 616 (quoting *FEC v. National Conservative Political Action Comm.*, 470 U.S. 480, 501, 105 S.Ct. 1459, 84 L.Ed.2d 455 (1985) (*NCPAC*)), did not apply to corporations that were structurally insulated from those concerns.<sup>61</sup>

It is worth remembering for present purposes that the four *MCFL* dissenters, led by Chief Justice Rehnquist, thought the Court was carrying the First Amendment *too* \*438 *far*. They would have recognized congressional authority to bar general treasury electioneering expenditures even by this class of nonprofits; they acknowledged that “the threat from corporate political activity will vary depending on the particular characteristics of a given corporation,” but believed these “distinctions among corporations” were “distinctions in degree,” not “in kind,” and thus “more properly drawn by the Legislature than by the Judiciary.” 479 U.S., at 268, 107 S.Ct. 616 (opinion of Rehnquist, C.J.) (internal quotation marks omitted). Not a single Justice suggested that regulation of \*\*956 corporate political speech could be no more stringent than of speech by an individual.

Four years later, in *Austin*, 494 U.S. 652, 110 S.Ct. 1391, 108 L.Ed.2d 652, we considered whether corporations falling outside the *MCFL* exception could be barred from using general treasury funds to make independent expenditures in support of, or in opposition to, candidates. We held they could be. Once again recognizing the importance of “the integrity of the marketplace of political ideas” in candidate elections, *MCFL*, 479 U.S., at 257, 107 S.Ct. 616, we noted that corporations have “special advantages—such as limited liability, perpetual life, and favorable treatment of the accumulation and distribution of assets,” 494 U.S., at 658–659, 110 S.Ct. 1391—that allow them to spend

prodigious general treasury sums on campaign messages that have “little or no correlation” with the beliefs held by actual persons, *id.*, at 660, 110 S.Ct. 1391. In light of the corrupting effects such spending might have on the political process, *ibid.*, we permitted the State of Michigan to limit corporate expenditures on candidate elections to corporations’ PACs, which rely on voluntary contributions and thus “reflect actual public support for the political ideas espoused by corporations,” *ibid.* Notwithstanding our colleagues’ insinuations that *Austin* deprived the public of general “ideas,” “facts,” and “ ‘knowledge,’ ” *ante*, at 906 – 907, the decision addressed only candidate-focused expenditures and gave the State no license to regulate corporate spending on other matters.

\*439 In the 20 years since *Austin*, we have reaffirmed its holding and rationale a number of times, see, e.g., *Beaumont*, 539 U.S., at 153–156, 123 S.Ct. 2200, most importantly in *McConnell*, 540 U.S. 93, 124 S.Ct. 619, 157 L.Ed.2d 491, where we upheld the provision challenged here, § 203 of BCRA.<sup>62</sup> Congress crafted § 203 in response to a problem created by *Buckley*. The *Buckley* Court had construed FECA’s definition of prohibited “expenditures” narrowly to avoid any problems of constitutional vagueness, holding it applicable only to “communications that expressly advocate the election or defeat of a clearly identified candidate,” 424 U.S., at 80, 96 S.Ct. 612, *i.e.*, statements containing so-called “magic words” like “ ‘vote for,’ ‘elect,’ ‘support,’ ‘cast your ballot for,’ ‘Smith for Congress,’ ‘vote against,’ ‘defeat,’ [or] ‘reject,’ ” *id.*, at 43–44, and n. 52, 96 S.Ct. 612. After *Buckley*, corporations and unions figured out how to circumvent the limits on express advocacy by using sham “issue ads” that “eschewed the use of magic words” but nonetheless “advocate[d] the election or defeat of clearly \*\*957 identified federal candidates.” *McConnell*, 540 U.S., at 126, 124 S.Ct. 619. “Corporations and unions spent hundreds \*440 of millions of dollars of their general funds to pay for these ads.” *Id.*, at 127, 124 S.Ct. 619. Congress passed § 203 to address this circumvention, prohibiting corporations and unions from using general treasury funds for electioneering communications that “refe[r] to a clearly identified candidate,” whether or not those communications use the magic words. 2 U.S.C. § 434(f)(3)(A)(i)(I).

When we asked in *McConnell* “whether a compelling governmental interest justify[ed]” § 203, we found the question “easily answered”: “We have repeatedly sustained legislation aimed at ‘the corrosive and distorting effects of immense aggregations of wealth that are accumulated

with the help of the corporate form and that have little or no correlation to the public's support for the corporation's political ideas.' " 540 U.S., at 205, 124 S.Ct. 619 (quoting *Austin*, 494 U.S., at 660, 110 S.Ct. 1391). These precedents "represent respect for the legislative judgment that the special characteristics of the corporate structure require particularly careful regulation." 540 U.S., at 205, 124 S.Ct. 619 (internal quotation marks omitted). "Moreover, recent cases have recognized that certain restrictions on corporate electoral involvement permissibly hedge against "circumvention of [valid] contribution limits." " *Ibid.* (quoting *Beaumont*, 539 U.S., at 155, 123 S.Ct. 2200, in turn quoting *FEC v. Colorado Republican Federal Campaign Comm.*, 533 U.S. 431, 456, and n. 18, 121 S.Ct. 2351, 150 L.Ed.2d 461 (2001) (*Colorado II*); alteration in original). BCRA, we found, is faithful to the compelling governmental interests in " 'preserving the integrity of the electoral process, preventing corruption, ... sustaining the active, alert responsibility of the individual citizen in a democracy for the wise conduct of the government,' " and maintaining " 'the individual citizen's confidence in government.' " 540 U.S., at 206–207, n. 88, 124 S.Ct. 619 (quoting *Bellotti*, 435 U.S., at 788–789, 98 S.Ct. 1407; some internal quotation marks and brackets omitted). What made the answer even easier than it might have been otherwise was the option to form PACs, which give corporations, at the least, \*441 "a constitutionally sufficient opportunity to engage in" independent expenditures. 540 U.S., at 203, 124 S.Ct. 619.

### 3. *Buckley* and *Bellotti*

Against this extensive background of congressional regulation of corporate campaign spending, and our repeated affirmation of this regulation as constitutionally sound, the majority dismisses *Austin* as "a significant departure from ancient First Amendment principles," *ante*, at 886 (internal quotation marks omitted). How does the majority attempt to justify this claim? Selected passages from two cases, *Buckley*, 424 U.S. 1, 96 S.Ct. 612, 46 L.Ed.2d 659, and *Bellotti*, 435 U.S. 765, 98 S.Ct. 1407, 55 L.Ed.2d 707, do all of the work. In the Court's view, *Buckley* and *Bellotti* decisively rejected the possibility of distinguishing corporations from natural persons in the 1970's; it just so happens that in every single case in which the Court has reviewed campaign finance legislation in the decades since, the majority failed to grasp this truth. The Federal Congress and dozens of state legislatures, we now know, have been similarly deluded.

The majority emphasizes *Buckley*'s statement that " '[t]he concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment.' " *Ante*, at 904 (quoting 424 U.S., at 48–49, 96 S.Ct. 612); *ante*, at 921 (opinion of ROBERTS, \*\*958 C.J.). But this elegant phrase cannot bear the weight that our colleagues have placed on it. For one thing, the Constitution does, in fact, permit numerous "restrictions on the speech of some in order to prevent a few from drowning out the many": for example, restrictions on ballot access and on legislators' floor time. *Nixon v. Shrink Missouri Government PAC*, 528 U.S. 377, 402, 120 S.Ct. 897, 145 L.Ed.2d 886 (2000) (BREYER, J., concurring). For another, the *Buckley* Court used this line in evaluating "the ancillary governmental interest in equalizing the relative ability of individuals and groups to influence the outcome of elections." 424 U.S., at 48, 96 S.Ct. 612. It is not apparent why this is relevant to the case \*442 before us. The majority suggests that *Austin* rests on the foreign concept of speech equalization, *ante*, at 904 – 905; *ante*, at 921 – 922 (opinion of ROBERTS, C.J.), but we made it clear in *Austin* (as in several cases before and since) that a restriction on the way corporations spend their money is no mere exercise in disfavoring the voice of some elements of our society in preference to others. Indeed, we *expressly* ruled that the compelling interest supporting Michigan's statute was not one of " 'equaliz[ing] the relative influence of speakers on elections,' " *Austin*, 494 U.S., at 660, 110 S.Ct. 1391 (quoting *id.*, at 705, 110 S.Ct. 1391 (KENNEDY, J., dissenting)), but rather the need to confront the distinctive corrupting potential of corporate electoral advocacy financed by general treasury dollars, *id.*, at 659–660, 110 S.Ct. 1391.

For that matter, it should go without saying that when we made this statement in *Buckley*, we could not have been casting doubt on the restriction on corporate expenditures in candidate elections, which had not been challenged as "foreign to the First Amendment," *ante*, at 904 (quoting *Buckley*, 424 U.S., at 49, 96 S.Ct. 612), or for any other reason. *Buckley*'s independent expenditure analysis was focused on a very different statutory provision, 18 U.S.C. § 608(e)(1) (1970 ed., Supp. V). It is implausible to think, as the majority suggests, *ante*, at 901 – 902, that *Buckley* covertly invalidated FECA's separate corporate and union campaign expenditure restriction, § 610 (now codified at 2 U.S.C. § 441b), even though that restriction had been on the books for decades before *Buckley* and would remain on the books, undisturbed, for decades after.

The case on which the majority places even greater weight than *Buckley*, however, is *Bellotti*, 435 U.S. 765, 98 S.Ct. 1407, 55 L.Ed.2d 707, claiming it “could not have been clearer” that *Bellotti*’s holding forbade distinctions between corporate and individual expenditures like the one at issue here, *ante*, at 902. The Court’s reliance is odd. The only thing about *Bellotti* that could not be clearer is that it declined to adopt the majority’s position. *Bellotti* ruled, in an explicit limitation on the scope of its holding, that “our consideration of a corporation’s right to \*443 speak on issues of general public interest implies no comparable right in the quite different context of participation in a political campaign for election to public office.” 435 U.S., at 788, n. 26, 98 S.Ct. 1407; see also *id.*, at 787–788, 98 S.Ct. 1407 (acknowledging that the interests in preserving public confidence in Government and protecting dissenting shareholders may be “weighty ... in the context of partisan candidate elections”). *Bellotti*, in other words, did not touch the question presented in *Austin* and *McConnell*, and the opinion squarely disavowed the proposition for which the majority cites it.

The majority attempts to explain away the distinction *Bellotti* drew—between general corporate speech and campaign speech intended to promote or prevent the election of specific candidates for office— \*\*959 as inconsistent with the rest of the opinion and with *Buckley*. *Ante*, at 903, 909 – 910. Yet the basis for this distinction is perfectly coherent: The anticorruption interests that animate regulations of corporate participation in candidate elections, the “importance” of which “has never been doubted,” 435 U.S., at 788, n. 26, 98 S.Ct. 1407, do not apply equally to regulations of corporate participation in referenda. A referendum cannot owe a political debt to a corporation, seek to curry favor with a corporation, or fear the corporation’s retaliation. Cf. *Austin*, 494 U.S., at 678, 110 S.Ct. 1391 (STEVENS, J., concurring); *Citizens Against Rent Control/Coalition for Fair Housing v. Berkeley*, 454 U.S. 290, 299, 102 S.Ct. 434, 70 L.Ed.2d 492 (1981). The majority likewise overlooks the fact that, over the past 30 years, our cases have repeatedly recognized the candidate/issue distinction. See, e.g., *Austin*, 494 U.S., at 659, 110 S.Ct. 1391; *NCPAC*, 470 U.S., at 495–496, 105 S.Ct. 1459; *FCC v. League of Women Voters of Cal.*, 468 U.S. 364, 371, n. 9, 104 S.Ct. 3106, 82 L.Ed.2d 278 (1984); *NRWC*, 459 U.S., at 210, n. 7, 103 S.Ct. 552. The Court’s critique of *Bellotti*’s footnote 26 puts it in the strange position of trying to elevate *Bellotti* to canonical status, while simultaneously disparaging a critical piece of its analysis as unsupported and

irreconcilable with *Buckley*. *Bellotti*, apparently, is both the font of all wisdom and internally incoherent.

\*444 The *Bellotti* Court confronted a dramatically different factual situation from the one that confronts us in this case: a state statute that barred business corporations’ expenditures on some referenda but not others. Specifically, the statute barred a business corporation “from making contributions or expenditures ‘for the purpose of ... influencing or affecting the vote on any question submitted to the voters, other than one materially affecting any of the property, business or assets of the corporation.’ ” 435 U.S., at 768, 98 S.Ct. 1407 (quoting Mass. Gen. Laws Ann., ch. 55, § 8 (West Supp.1977); alteration in original), and it went so far as to provide that referenda related to income taxation would not “ ‘be deemed materially to affect the property, business or assets of the corporation,’ ” 435 U.S., at 768, 98 S.Ct. 1407. As might be guessed, the legislature had enacted this statute in order to limit corporate speech on a proposed state constitutional amendment to authorize a graduated income tax. The statute was a transparent attempt to prevent corporations from spending money to defeat this amendment, which was favored by a majority of legislators but had been repeatedly rejected by the voters. See *id.*, at 769–770, and n. 3, 98 S.Ct. 1407. We said that “where, as here, the legislature’s suppression of speech suggests an attempt to give one side of a debatable public question an advantage in expressing its views to the people, the First Amendment is plainly offended.” *Id.*, at 785–786, 98 S.Ct. 1407 (footnote omitted).

*Bellotti* thus involved a *viewpoint-discriminatory* statute, created to effect a particular policy outcome. Even Justice Rehnquist, in dissent, had to acknowledge that “a very persuasive argument could be made that the [Massachusetts Legislature], desiring to impose a personal income tax but more than once defeated in that desire by the combination of the Commonwealth’s referendum provision and corporate expenditures in opposition to such a tax, simply decided to muzzle corporations on this sort of issue so that it could succeed in its desire.” *Id.*, at 827, n. 6, 98 S.Ct. 1407. To make matters \*445 worse, the law at issue did not make any allowance for corporations to spend money through PACs. *Id.*, at 768, n. 2, 98 S.Ct. 1407 (opinion of the Court). This really was a \*\*960 complete ban on a specific, preidentified subject. See *MCFL*, 479 U.S., at 259, n. 12, 107 S.Ct. 616 (stating that 2 U.S.C. § 441b’s expenditure restriction “is of course distinguishable from the complete foreclosure of any opportunity for political speech that we invalidated in the state referendum context in ... *Bellotti*” (emphasis added)).



The majority grasps a quotational straw from *Bellotti*, that speech does not fall entirely outside the protection of the First Amendment merely because it comes from a corporation. *Ante*, at 902 – 903. Of course not, but no one suggests the contrary, and neither *Austin* nor *McConnell* held otherwise. They held that even though the expenditures at issue were subject to First Amendment scrutiny, the restrictions on those expenditures were justified by a compelling state interest. See *McConnell*, 540 U.S., at 205, 124 S.Ct. 619; *Austin*, 494 U.S., at 658, 660, 110 S.Ct. 1391. We acknowledged in *Bellotti* that numerous “interests of the highest importance” can justify campaign finance regulation. 435 U.S., at 788–789, 98 S.Ct. 1407. But we found no evidence that these interests were served by the Massachusetts law. *Id.*, at 789, 98 S.Ct. 1407. We left open the possibility that our decision might have been different if there had been “record or legislative findings that corporate advocacy threatened imminently to undermine democratic processes, thereby denigrating rather than serving First Amendment interests.” *Ibid*.

*Austin* and *McConnell*, then, sit perfectly well with *Bellotti*. Indeed, all six Members of the *Austin* majority had been on the Court at the time of *Bellotti*, and none so much as hinted in *Austin* that they saw any tension between the decisions. The difference between the cases is not that *Austin* and *McConnell* rejected First Amendment protection for corporations whereas *Bellotti* accepted it. The difference is that the statute at issue in *Bellotti* smacked of viewpoint \*446 discrimination, targeted one class of corporations, and provided no PAC option; and the State has a greater interest in regulating independent corporate expenditures on candidate elections than on referenda, because in a functioning democracy the public must have faith that its representatives owe their positions to the people, not to the corporations with the deepest pockets.

\* \* \*

In sum, over the course of the past century Congress has demonstrated a recurrent need to regulate corporate participation in candidate elections to “ ‘[p]reserv[e] the integrity of the electoral process, preven[t] corruption, ... sustai[n] the active, alert responsibility of the individual citizen,’ ” protect the expressive interests of shareholders, and “ ‘[p]reserv[e] ... the individual citizen’s confidence in government.’ ” *McConnell*, 540 U.S., at 206–207, n. 88, 124 S.Ct. 619 (quoting *Bellotti*, 435 U.S., at 788–789, 98

S.Ct. 1407; first alteration in original). These understandings provided the combined impetus behind the Tillman Act in 1907, see *Automobile Workers*, 352 U.S., at 570–575, 77 S.Ct. 529, the Taft–Hartley Act in 1947, see *WRTL*, 551 U.S., at 511, 127 S.Ct. 2652 (Souter, J., dissenting), FECA in 1971, see *NRWC*, 459 U.S., at 209–210, 103 S.Ct. 552, and BCRA in 2002, see *McConnell*, 540 U.S., at 126–132, 124 S.Ct. 619. Continuously for over 100 years, this line of “[c]ampaign finance reform has been a series of reactions to documented threats to electoral integrity obvious to any voter, posed by large sums of money from corporate or union treasuries.” *WRTL*, 551 U.S., at 522, 127 S.Ct. 2652 (Souter, J., dissenting). Time and again, we have recognized these realities in approving \*\*961 measures that Congress and the States have taken. None of the cases the majority cites is to the contrary. The only thing new about *Austin* was the dissent, with its stunning failure to appreciate the legitimacy of interests recognized in the name of democratic integrity since the days of the Progressives.

#### \*447 IV

Having explained why this is not an appropriate case in which to revisit *Austin* and *McConnell* and why these decisions sit perfectly well with “First Amendment principles,” *ante*, at 886, 912, I come at last to the interests that are at stake. The majority recognizes that *Austin* and *McConnell* may be defended on anticorruption, antidistortion, and shareholder protection rationales. *Ante*, at 903 – 911. It badly errs both in explaining the nature of these rationales, which overlap and complement each other, and in applying them to the case at hand.

#### *The Anticorruption Interest*

Undergirding the majority’s approach to the merits is the claim that the only “sufficiently important governmental interest in preventing corruption or the appearance of corruption” is one that is “limited to *quid pro quo* corruption.” *Ante*, at 909 – 910. This is the same “crabbed view of corruption” that was espoused by Justice KENNEDY in *McConnell* and squarely rejected by the Court in that case. 540 U.S., at 152, 124 S.Ct. 619. While it is true that we have not always spoken about corruption in a clear or consistent voice, the approach taken by the majority cannot be right, in my judgment. It disregards our constitutional history and the fundamental demands of a democratic society.



On numerous occasions we have recognized Congress' legitimate interest in preventing the money that is spent on elections from exerting an " 'undue influence on an officeholder's judgment' " and from creating " 'the appearance of such influence,' " beyond the sphere of *quid pro quo* relationships. *Id.*, at 150, 124 S.Ct. 619; see also, *e.g.*, *id.*, at 143–144, 152–154, 124 S.Ct. 619; *Colorado II*, 533 U.S., at 441, 121 S.Ct. 2351; *Shrink Missouri*, 528 U.S., at 389, 120 S.Ct. 897. Corruption can take many forms. Bribery may be the paradigm case. But the difference between selling a vote and selling access is a matter of degree, not kind. And selling \*448 access is not qualitatively different from giving special preference to those who spent money on one's behalf. Corruption operates along a spectrum, and the majority's apparent belief that *quid pro quo* arrangements can be neatly demarcated from other improper influences does not accord with the theory or reality of politics. It certainly does not accord with the record Congress developed in passing BCRA, a record that stands as a remarkable testament to the energy and ingenuity with which corporations, unions, lobbyists, and politicians may go about scratching each other's backs—and which amply supported Congress' determination to target a limited set of especially destructive practices.

The District Court that adjudicated the initial challenge to BCRA pored over this record. In a careful analysis, Judge Kollar-Kotelly made numerous findings about the corrupting consequences of corporate and union independent expenditures in the years preceding BCRA's passage. See *McConnell*, 251 F.Supp.2d, at 555–560, 622–625; see also *id.*, at 804–805, 813, n. 143 (Leon, J.) (indicating agreement). As summarized in her own words:

"The factual findings of the Court illustrate that corporations and labor unions routinely notify Members of Congress as soon as they air electioneering communications relevant to the Members' elections. The record also indicates \*\*962 that Members express appreciation to organizations for the airing of these election-related advertisements. Indeed, Members of Congress are particularly grateful when negative issue advertisements are run by these organizations, leaving the candidates free to run positive advertisements and be seen as 'above the fray.' Political consultants testify that campaigns are quite aware of who is running advertisements on the candidate's behalf, when they are being run, and where they are being run. Likewise, a prominent lobbyist \*449 testifies that these organizations use issue advocacy as a means to influence various Members of Congress.

"The Findings also demonstrate that Members of Congress seek to have corporations and unions run these advertisements on their behalf. The Findings show that Members suggest that corporations or individuals make donations to interest groups with the understanding that the money contributed to these groups will assist the Member in a campaign. After the election, these organizations often seek credit for their support.... Finally, a large majority of Americans (80%) are of the view that corporations and other organizations that engage in electioneering communications, which benefit specific elected officials, receive special consideration from those officials when matters arise that affect these corporations and organizations." *Id.*, at 623–624 (citations and footnote omitted).

Many of the relationships of dependency found by Judge Kollar-Kotelly seemed to have a *quid pro quo* basis, but other arrangements were more subtle. Her analysis shows the great difficulty in delimiting the precise scope of the *quid pro quo* category, as well as the adverse consequences that *all* such arrangements may have. There are threats of corruption that are far more destructive to a democratic society than the odd bribe. Yet the majority's understanding of corruption would leave lawmakers impotent to address all but the most discrete abuses.

Our "undue influence" cases have allowed the American people to cast a wider net through legislative experiments designed to ensure, to some minimal extent, "that officeholders will decide issues ... on the merits or the desires of their constituencies," and not "according to the wishes of those who have made large financial contributions"—or expenditures—"valued by the officeholder." \*450 *McConnell*, 540 U.S., at 153, 124 S.Ct. 619.<sup>63</sup> When private interests are seen to exert outsized control over officeholders solely on account of the money spent on (or withheld from) their campaigns, the result can depart so thoroughly "from what is pure or correct" in the conduct of Government, Webster's Third New International Dictionary 512 (1966) (defining "corruption"), that it amounts to a "subversion \*\*963 ... of the ... electoral process," *Automobile Workers*, 352 U.S., at 575, 77 S.Ct. 529. At stake in the legislative efforts to address this threat is therefore not only the legitimacy and quality of Government but also the public's faith therein, not only "the capacity of this democracy to represent its constituents [but also] the confidence of its citizens in their capacity to govern themselves." *WRTL*, 551

U.S., at 507, 127 S.Ct. 2652 (Souter, J., dissenting). “Take away Congress’ authority to regulate the appearance of undue influence and ‘the cynical assumption that large donors call the tune could jeopardize the willingness of voters to take part in democratic governance.’ ” *McConnell*, 540 U.S., at 144, 124 S.Ct. 619 (quoting *Shrink Missouri*, 528 U.S., at 390, 120 S.Ct. 897).<sup>64</sup>

\*451 The cluster of interrelated interests threatened by such undue influence and its appearance has been well captured under the rubric of “democratic integrity.” *WRTL*, 551 U.S., at 522, 127 S.Ct. 2652 (Souter, J., dissenting). This value has underlined a century of state and federal efforts to regulate the role of corporations in the electoral process.<sup>65</sup>

Unlike the majority’s myopic focus on *quid pro quo* scenarios and the free-floating “First Amendment principles” on which it rests so much weight, *ante.* at 886, 912, this broader understanding of corruption has deep roots in the Nation’s history. “During debates on the earliest [campaign finance] reform acts, the terms ‘corruption’ and ‘undue influence’ were used nearly interchangeably.” Pasquale, Reclaiming Egalitarianism in the Political Theory of Campaign Finance Reform, 2008 U. Ill. L.Rev. 599, 601. Long before *Buckley*, we appreciated that “[t]o say that Congress is without power to pass appropriate legislation to safeguard ... an election from the improper use of money to influence the result is to deny to the nation in a vital particular the power of self protection.” *Burroughs v. United States*, 290 U.S. 534, 545, 54 S.Ct. 287, 78 L.Ed. 484 (1934). And whereas we have no evidence to support the notion that the Framers would have wanted corporations to have the same rights as natural persons in the electoral context, we have ample evidence to suggest that they would \*452 have been appalled by the evidence of corruption that Congress unearthed in developing BCRA and that the Court today discounts to irrelevance. It is fair to say that “[t]he Framers were obsessed with corruption.”

\*\*964 Teachout 348, which they understood to encompass the dependency of public officeholders on private interests, see *id.*, at 373–374; see also *Randall*, 548 U.S., at 280, 126 S.Ct. 2479 (STEVENSON, J., dissenting). They discussed corruption “more often in the Constitutional Convention than factions, violence, or instability.” Teachout 352. When they brought our constitutional order into being, the Framers had their minds trained on a threat to republican self-government that this Court has lost sight of.

### *Quid Pro Quo Corruption*

There is no need to take my side in the debate over the scope of the anticorruption interest to see that the Court’s merits holding is wrong. Even under the majority’s “crabbed view of corruption,” *McConnell*, 540 U.S., at 152, 124 S.Ct. 619, the Government should not lose this case.

“The importance of the governmental interest in preventing [corruption through the creation of political debts] has never been doubted.” *Bellotti*, 435 U.S., at 788, n. 26, 98 S.Ct. 1407. Even in the cases that have construed the anticorruption interest most narrowly, we have never suggested that such *quid pro quo* debts must take the form of outright vote buying or bribes, which have long been distinct crimes. Rather, they encompass the myriad ways in which outside parties may induce an officeholder to confer a legislative benefit in direct response to, or anticipation of, some outlay of money the parties have made or will make on behalf of the officeholder. See *McConnell*, 540 U.S., at 143, 124 S.Ct. 619 (“We have not limited [the anticorruption] interest to the elimination of cash-for-votes exchanges. In *Buckley*, we expressly rejected the argument that antibribery laws provided a less restrictive alternative to FECA’s contribution limits, noting that such laws ‘deal[t] with only the most blatant and specific attempts \*453 of those with money to influence governmental action’ ” (quoting 424 U.S., at 28, 96 S.Ct. 612; alteration in original)). It has likewise never been doubted that “[o]f almost equal concern as the danger of actual *quid pro quo* arrangements is the impact of the appearance of corruption.” *Id.* at 27, 96 S.Ct. 612. Congress may “legitimately conclude that the avoidance of the appearance of improper influence is also critical ... if confidence in the system of representative Government is not to be eroded to a disastrous extent.” *Ibid.* (internal quotation marks omitted; alteration in original). A democracy cannot function effectively when its constituent members believe laws are being bought and sold.

In theory, our colleagues accept this much. As applied to BCRA § 203, however, they conclude “[t]he anticorruption interest is not sufficient to displace the speech here in question.” *Ante.* at 908.

Although the Court suggests that *Buckley* compels its conclusion, *ante.* at 908 – 910, *Buckley* cannot sustain this reading. It is true that, in evaluating FECA’s ceiling on independent expenditures by all persons, the *Buckley* Court found the governmental interest in preventing corruption “inadequate.” 424 U.S., at 45, 96 S.Ct. 612. But *Buckley*

did not evaluate corporate expenditures specifically, nor did it rule out the possibility that a future Court might find otherwise. The opinion reasoned that an expenditure limitation covering only express advocacy (*i.e.*, magic words) would likely be ineffectual, *ibid.*, a problem that Congress tackled in BCRA, and it concluded that “the independent advocacy restricted by [FECA § 608(e)(1)] does not presently appear to pose dangers of real or apparent corruption comparable to those identified with large campaign contributions,” *id.*, at 46, 96 S.Ct. 612 (emphasis added). *Buckley* expressly contemplated that an anticorruption \*\*965 rationale might justify restrictions on independent expenditures at a later date, “because it may be that, in some circumstances, ‘large independent expenditures pose the same dangers of actual or apparent *quid pro quo* \*454 arrangements as do large contributions.’ ” *WRTL*, 551 U.S., at 478, 127 S.Ct. 2652 (opinion of ROBERTS, C.J.) (quoting *Buckley*, 424 U.S., at 45, 96 S.Ct. 612). Certainly *Buckley* did not foreclose this possibility with respect to electioneering communications made with corporate general treasury funds, an issue the Court had no occasion to consider.

The *Austin* Court did not rest its holding on *quid pro quo* corruption, as it found the broader corruption implicated by the antidistortion and shareholder protection rationales a sufficient basis for Michigan’s restriction on corporate electioneering. 494 U.S., at 658–660, 110 S.Ct. 1391. Concurring in that opinion, I took the position that “the danger of either the fact, or the appearance, of *quid pro quo* relationships [also] provides an adequate justification for state regulation” of these independent expenditures. *Id.*, at 678, 110 S.Ct. 1391. I did not see this position as inconsistent with *Buckley*’s analysis of individual expenditures. Corporations, as a class, tend to be more attuned to the complexities of the legislative process and more directly affected by tax and appropriations measures that receive little public scrutiny; they also have vastly more money with which to try to buy access and votes. See Supp. Brief for Appellee 17 (stating that the Fortune 100 companies earned revenues of \$13.1 trillion during the last election cycle). Business corporations must engage the political process in instrumental terms if they are to maximize shareholder value. The unparalleled resources, professional lobbyists, and single-minded focus they bring to this effort, I believed, make *quid pro quo* corruption and its appearance inherently more likely when they (or their conduits or trade groups) spend unrestricted sums on elections.

It is with regret rather than satisfaction that I can now say that time has borne out my concerns. The legislative and judicial proceedings relating to BCRA generated a substantial body of evidence suggesting that, as corporations grew more and more adept at crafting “issue ads” to help \*455 or harm a particular candidate, these nominally independent expenditures began to corrupt the political process in a very direct sense. The sponsors of these ads were routinely granted special access after the campaign was over; “candidates and officials knew who their friends were,” *McConnell*, 540 U.S., at 129, 124 S.Ct. 619. Many corporate independent expenditures, it seemed, had become essentially interchangeable with direct contributions in their capacity to generate *quid pro quo* arrangements. In an age in which money and television ads are the coin of the campaign realm, it is hardly surprising that corporations deployed these ads to curry favor with, and to gain influence over, public officials.

The majority appears to think it decisive that the BCRA record does not contain “direct examples of votes being exchanged for ... expenditures.” *Ante.*, at 910 (internal quotation marks omitted). It would have been quite remarkable if Congress had created a record detailing such behavior by its own Members. Proving that a specific vote was exchanged for a specific expenditure has always been next to impossible: Elected officials have diverse motivations, and no one will acknowledge that he sold a vote. Yet, even if “[i]ngratiation and access ... are not corruption” themselves, *ibid.*, they are necessary prerequisites to it; they can create both the opportunity for, and the appearance of, *quid pro quo* arrangements. The influx of unlimited corporate money into the electoral \*\*966 realm also creates new opportunities for the mirror image of *quid pro quo* deals: threats, both explicit and implicit. Starting today, corporations with large war chests to deploy on electioneering may find democratically elected bodies becoming much more attuned to their interests. The majority both misreads the facts and draws the wrong conclusions when it suggests that the BCRA record provides “only scant evidence that independent expenditures ... ingratiate,” and that, “in any event,” none of it matters. *Ibid.*

\*456 In her analysis of the record, Judge Kollar-Kotelly documented the pervasiveness of this ingratiation and explained its significance under the majority’s own touchstone for defining the scope of the anticorruption rationale, *Buckley*. See *McConnell*, 251 F.Supp.2d, at 555–560, 622–625. Witnesses explained how political parties and candidates used corporate independent expenditures to

circumvent FECA's "hard-money" limitations. See, e.g., *id.*, at 478–479. One former Senator candidly admitted to the District Court that “ [c]andidates whose campaigns benefit from [phony “issue ads”] greatly appreciate the help of these groups. In fact, Members will also be favorably disposed to those who finance these groups when they later seek access to discuss pending legislation.” ” *Id.*, at 556 (quoting declaration of Sen. Dale Bumpers). One prominent lobbyist went so far as to state, in uncontroverted testimony, that “ ‘unregulated expenditures—whether soft money donations to the parties or issue ad campaigns—can sometimes generate far more influence than direct campaign contributions.’ ” ” *Ibid.* (quoting declaration of Wright Andrews; emphasis added). In sum, Judge Kollar-Kotelly found, “[t]he record powerfully demonstrates that electioneering communications paid for with the general treasury funds of labor unions and corporations endears those entities to elected officials in a way that could be perceived by the public as corrupting.” ” *Id.*, at 622–623. She concluded that the Government's interest in preventing the appearance of corruption, as that concept was defined in *Buckley*, was itself sufficient to uphold BCRA § 203. 251 F.Supp.2d, at 622–625. Judge Leon agreed. See *id.*, at 804–805 (dissenting only with respect to the Wellstone Amendment's coverage of MCFL corporations).

When the *McConnell* Court affirmed the judgment of the District Court regarding § 203, we did not rest our holding on a narrow notion of *quid pro quo* corruption. Instead we relied on the governmental interest in combating the unique forms of corruption threatened by corporations, as recognized \*457 in *Austin*'s antidistortion and shareholder protection rationales, 540 U.S., at 205, 124 S.Ct. 619 (citing *Austin*, 494 U.S., at 660, 110 S.Ct. 1391), as well as the interest in preventing circumvention of contribution limits, 540 U.S., at 128–129, 205, 206, n. 88, 124 S.Ct. 619. Had we felt constrained by the view of today's Court that *quid pro quo* corruption and its appearance are the only interests that count in this field, *ante*, at 903 – 911, we of course would have looked closely at that issue. And as the analysis by Judge Kollar-Kotelly reflects, it is a very real possibility that we would have found one or both of those interests satisfied and § 203 appropriately tailored to them.

The majority's rejection of the *Buckley* anticorruption rationale on the ground that independent corporate expenditures “do not give rise to [*quid pro quo*] corruption or the appearance of corruption,” *ante*, at 909, is thus unfair as well as unreasonable. Congress and outside experts have generated significant evidence corroborating this rationale,

and the only reason we do not have any of the relevant materials before us is that the Government had no reason \*\*967 to develop a record at trial for a facial challenge the plaintiff had abandoned. The Court cannot both *sua sponte* choose to relitigate *McConnell* on appeal and then complain that the Government has failed to substantiate its case. If our colleagues were really serious about the interest in preventing *quid pro quo* corruption, they would remand to the District Court with instructions to commence evidentiary proceedings.<sup>66</sup>

\*458 The insight that even technically independent expenditures can be corrupting in much the same way as direct contributions is bolstered by our decision last year in *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 129 S.Ct. 2252, 173 L.Ed.2d 1208 (2009). In that case, Don Blankenship, the chief executive officer of a corporation with a lawsuit pending before the West Virginia high court, spent large sums on behalf of a particular candidate, Brent Benjamin, running for a seat on that court. “In addition to contributing the \$1,000 statutory maximum to Benjamin's campaign committee, Blankenship donated almost \$2.5 million to ‘And For The Sake Of The Kids,’ ” ” a § 527 corporation that ran ads targeting Benjamin's opponent. *Id.*, at 873, 129 S.Ct., at 2257. “This was not all. Blankenship spent, in addition, just over \$500,000 on independent expenditures ... ‘to support ... Brent Benjamin.’ ” ” *Ibid.* (second alteration in original). Applying its common sense, this Court accepted petitioners' argument that Blankenship's “pivotal role in getting Justice Benjamin elected created a constitutionally intolerable probability of actual bias” when Benjamin later declined to recuse himself from the appeal by Blankenship's corporation. *Id.*, at 882, 129 S.Ct., at 2262. “Though n[o] ... bribe or criminal influence” was involved, we recognized that “Justice Benjamin would nevertheless feel a debt of gratitude to Blankenship for his extraordinary efforts to get him elected.” *Ibid.* “The difficulties of inquiring into actual bias,” we further noted, “simply underscore the need for objective rules,” *id.*, at 883, 129 S.Ct., at 2263—rules which will perforce turn on the appearance of bias rather than its actual existence.

In *Caperton*, then, we accepted the premise that, at least in some circumstances, independent expenditures on candidate elections will raise an intolerable specter of *quid pro quo* corruption. Indeed, this premise struck the Court as so intuitive that it repeatedly referred to Blankenship's spending on behalf of Benjamin—spending that consisted of \*459 99.97% independent expenditures (\$3 million) and



0.03% direct contributions (\$1,000)—as a “contribution.” See, e.g., *id.*, at 872, 129 S.Ct., at 2257 (“The basis for the [recusal] motion was that the justice had received campaign contributions in an extraordinary amount from” Blankenship); *id.*, at 873, 129 S.Ct., at 2258 (referencing “Blankenship’s \$3 million in contributions”); *id.*, at 884, 129 S.Ct., at 2264 (“Blankenship contributed some \$3 million to unseat the incumbent and replace him with Benjamin” \*\*968 ); *id.*, at 885, 129 S.Ct., at 2264 (“Blankenship’s campaign contributions ... had a significant and disproportionate influence on the electoral outcome”). The reason the Court so thoroughly conflated expenditures and contributions, one assumes, is that it realized that some expenditures may be functionally equivalent to contributions in the way they influence the outcome of a race, the way they are interpreted by the candidates and the public, and the way they taint the decisions that the officeholder thereafter takes.

*Caperton* is illuminating in several additional respects. It underscores the old insight that, on account of the extreme difficulty of proving corruption, “prophylactic measures, reaching some [campaign spending] not corrupt in purpose or effect, [may be] nonetheless required to guard against corruption.” *Buckley*, 424 U.S., at 30, 96 S.Ct. 612; see also *Shrink Missouri*, 528 U.S., at 392, n. 5, 120 S.Ct. 897. It underscores that “certain restrictions on corporate electoral involvement” may likewise be needed to “hedge against circumvention of valid contribution limits.” *McConnell*, 540 U.S., at 205, 124 S.Ct. 619 (internal quotation marks and brackets omitted); see also *Colorado II*, 533 U.S., at 456, 121 S.Ct. 2351 (“[A]ll Members of the Court agree that circumvention is a valid theory of corruption”). It underscores that for-profit corporations associated with electioneering communications will often prefer to use nonprofit conduits with “misleading names,” such as And For The Sake Of The Kids, “to conceal their identity” as the sponsor of those communications, thereby frustrating the utility of disclosure \*460 laws. *McConnell*, 540 U.S., at 128, 124 S.Ct. 619; see also *id.*, at 196–197, 124 S.Ct. 619.

And it underscores that the consequences of today’s holding will not be limited to the legislative or executive context. The majority of the States select their judges through popular elections. At a time when concerns about the conduct of judicial elections have reached a fever pitch, see, e.g., O’Connor, Justice for Sale, *Wall St. Journal*, Nov. 15, 2007, p. A25; Brief for Justice at Stake et al. as *Amici Curiae* 2, the Court today unleashes the floodgates of corporate and union general treasury spending in these races. Perhaps “*Caperton*

motions” will catch some of the worst abuses. This will be small comfort to those States that, after today, may no longer have the ability to place modest limits on corporate electioneering even if they believe such limits to be critical to maintaining the integrity of their judicial systems.

#### *Deference and Incumbent Self-Protection*

Rather than show any deference to a coordinate branch of Government, the majority thus rejects the anticorruption rationale without serious analysis.<sup>67</sup> Today’s opinion provides no clear rationale for being so dismissive of Congress, but the prior individual opinions on which it relies have offered one: the incentives of the legislators who passed BCRA. Section 203, our colleagues have suggested, may be little more than “an incumbency protection plan,” *McConnell*, 540 U.S., at 306, 124 S.Ct. 619 (KENNEDY, J., concurring in judgment in part and dissenting in part); see also *id.*, at 249–250, 260–263, 124 S.Ct. 619 (SCALIA, J., concurring in part, concurring in judgment in part, and dissenting in part), a disreputable attempt at legislative \*\*969 self-dealing rather than an earnest effort to facilitate First Amendment values and safeguard the legitimacy \*461 of our political system. This possibility, the Court apparently believes, licenses it to run roughshod over Congress’ handiwork.

In my view, we should instead start by acknowledging that “Congress surely has both wisdom and experience in these matters that is far superior to ours.” *Colorado Republican Federal Campaign Comm. v. FEC*, 518 U.S. 604, 650, 116 S.Ct. 2309, 135 L.Ed.2d 795 (1996) (STEVENS, J., dissenting). Many of our campaign finance precedents explicitly and forcefully affirm the propriety of such presumptive deference. See, e.g., *McConnell*, 540 U.S., at 158, 124 S.Ct. 619; *Beaumont*, 539 U.S., at 155–156, 123 S.Ct. 2200; *NRWC*, 459 U.S., at 209–210, 103 S.Ct. 552. Moreover, “[j]udicial deference is particularly warranted where, as here, we deal with a congressional judgment that has remained essentially unchanged throughout a century of careful legislative adjustment.” *Beaumont*, 539 U.S., at 162, n. 9, 123 S.Ct. 2200 (internal quotation marks omitted); cf. *Shrink Missouri*, 528 U.S., at 391, 120 S.Ct. 897 (“The quantum of empirical evidence needed to satisfy heightened judicial scrutiny of legislative judgments will vary up or down with the novelty and plausibility of the justification raised”). In America, incumbent legislators pass the laws that govern campaign finance, just like all other laws. To apply a level of scrutiny that effectively bars them from regulating electioneering whenever there is the faintest whiff

Decision No. 78040



of self-interest, is to deprive them of the ability to regulate electioneering.

This is not to say that deference would be appropriate if there were a solid basis for believing that a legislative action was motivated by the desire to protect incumbents or that it will degrade the competitiveness of the electoral process.<sup>68</sup>

<sup>\*462</sup> See *League of United Latin American Citizens v. Perry*, 548 U.S. 399, 447, 126 S.Ct. 2594, 165 L.Ed.2d 609 (2006) (STEVENSON, J., concurring in part and dissenting in part); *Vieth v. Jubelirer*, 541 U.S. 267, 317, 124 S.Ct. 1769, 158 L.Ed.2d 546 (2004) (STEVENSON, J., dissenting). Along with our duty to balance competing constitutional concerns, we have a vital role to play in ensuring that elections remain at least minimally open, fair, and competitive. But it is the height of recklessness to dismiss Congress' years of bipartisan deliberation and its reasoned judgment on this basis, without first confirming that the statute in question was intended to be, or will function as, a restraint on electoral competition. "Absent record evidence of invidious discrimination against challengers as a class, a court should generally be hesitant to invalidate legislation which on its face imposes evenhanded restrictions." *Buckley*, 424 U.S., at 31, 96 S.Ct. 612.

We have no record evidence from which to conclude that BCRA § 203, or any of the dozens of state laws that the Court today calls into question, reflects or fosters such invidious discrimination. Our colleagues have opined that " 'any restriction upon a type of campaign speech that is equally available to challengers and incumbents tends to favor incumbents.' " *McConnell*, 540 U.S., at 249, 124 S.Ct. 619 (opinion of SCALIA, J.). This kind of airy speculation could easily be turned on its head. The electioneering prohibited by <sup>\*\*970</sup> § 203 might well tend to favor incumbents, because incumbents have pre-existing relationships with corporations and unions, and groups that wish to procure legislative benefits may tend to support the candidate who, as a sitting officeholder, is already in a position to dispense benefits and is statistically likely to retain office. If a corporation's goal is to induce officeholders to do its bidding, the corporation would do well to cultivate stable, long-term relationships of dependency.

So we do not have a solid theoretical basis for condemning § 203 as a front for incumbent self-protection, and it seems equally if not more plausible that restrictions on corporate electioneering will be self-denying. Nor do we have a good <sup>\*463</sup> empirical case for skepticism, as the Court's failure to cite any empirical research attests. Nor does the

legislative history give reason for concern. Congress devoted years of careful study to the issues underlying BCRA: "[f]ew legislative proposals in recent years have received as much sustained public commentary or news coverage"; "[p]olitical scientists and academic experts ... with no self-interest in incumbent protectio[n] were central figures in pressing the case for BCRA"; and the legislation commanded bipartisan support from the outset. Pildes, *The Supreme Court 2003 Term Foreword: The Constitutionalization of Democratic Politics*, 118 Harv. L.Rev. 28, 137 (2004). Finally, it is important to remember just how incumbent-friendly congressional races were prior to BCRA's passage. As the Solicitor General aptly remarked at the time, "the evidence supports overwhelmingly that incumbents were able to get re-elected under the old system just fine." Tr. of Oral Arg. in *McConnell v. FEC*, O.T. 2003, No. 02-1674, p. 61. "It would be hard to develop a scheme that could be better for incumbents." *Id.*, at 63.

In this case, then, "there is no convincing evidence that th[e] important interests favoring expenditure limits are fronts for incumbency protection." *Randall*, 548 U.S., at 279, 126 S.Ct. 2479 (STEVENSON, J., dissenting). "In the meantime, a legislative judgment that 'enough is enough' should command the greatest possible deference from judges interpreting a constitutional provision that, at best, has an indirect relationship to activity that affects the quantity ... of repetitive speech in the marketplace of ideas." *Id.*, at 279-280, 126 S.Ct. 2479. The majority cavalierly ignores Congress' factual findings and its constitutional judgment: It acknowledges the validity of the interest in preventing corruption, but it effectively discounts the value of that interest to zero. This is quite different from conscientious policing for impermissibly anticompetitive motive or effect in a sensitive First Amendment context. <sup>\*464</sup> It is the denial of Congress' authority to regulate corporate spending on elections.

#### *Austin and Corporate Expenditures*

Just as the majority gives short shrift to the general societal interests at stake in campaign finance regulation, it also overlooks the distinctive considerations raised by the regulation of *corporate* expenditures. The majority fails to appreciate that *Austin's* antidistortion rationale is itself an anticorruption rationale, see 494 U.S., at 660, 110 S.Ct. 1391 (describing "a different type of corruption"), tied to the special concerns raised by corporations. Understood properly, "antidistortion" is simply a variant on the

Decision No. 78040

classic governmental interest in protecting against improper influences on officeholders that debilitate the democratic process. It is manifestly not just an “‘equalizing’” ideal in disguise. *Ante*, at 904 (quoting *Buckley*, 424 U.S., at 48, 96 S.Ct. 612).<sup>69</sup>

**\*\*971 \*465** 1. *Antidistortion*

The fact that corporations are different from human beings might seem to need no elaboration, except that the majority opinion almost completely elides it. *Austin* set forth some of the basic differences. Unlike natural persons, corporations have “limited liability” for their owners and managers, “perpetual life,” separation of ownership and control, “and favorable treatment of the accumulation and distribution of assets ... that enhance their ability to attract capital and to deploy their resources in ways that maximize the return on their shareholders’ investments.” 494 U.S., at 658–659, 110 S.Ct. 1391. Unlike voters in U.S. elections, corporations may be foreign controlled.<sup>70</sup> Unlike other interest groups, business corporations have been “effectively delegated responsibility for ensuring society’s economic welfare”;<sup>71</sup> they inescapably structure the life of every citizen. “‘[T]he resources in the treasury of a business corporation,’” furthermore, “‘are not an indication of popular support for the corporation’s political ideas.’” *Id.*, at 659, 110 S.Ct. 1391 (quoting *MCFL*, 479 U.S., at 258, 107 S.Ct. 616). “‘They reflect instead the economically motivated decisions of investors and customers. The availability of these resources may make a corporation a formidable political presence, even though the power of the corporation may be no reflection of the power of its ideas.’” 494 U.S., at 659, 110 S.Ct. 1391 (quoting *MCFL*, 479 U.S., at 258, 107 S.Ct. 616).<sup>72</sup>

**\*\*972 \*466** It might also be added that corporations have no consciences, no beliefs, no feelings, no thoughts, no desires. Corporations help structure and facilitate the activities of human beings, to be sure, and their “personhood” often serves as a useful legal fiction. But they are not themselves members of “We the People” by whom and for whom our Constitution was established.

These basic points help explain why corporate electioneering is not only more likely to impair compelling governmental interests, but also why restrictions on that electioneering are less likely to encroach upon First Amendment freedoms. One fundamental concern of the First Amendment is to “protect[t]

the individual’s interest in self-expression.” *Consolidated Edison Co. of N.Y. v. Public Serv. Comm’n of N. Y.*, 447 U.S. 530, 534, n. 2, 100 S.Ct. 2326, 65 L.Ed.2d 319 (1980); see also *Bellotti*, 435 U.S., at 777, n. 12, 98 S.Ct. 1407. Freedom of speech helps “make men free to develop their faculties.” *Whitney v. California*, 274 U.S. 357, 375, 47 S.Ct. 641, 71 L.Ed. 1095 (1927) (Brandeis, J., concurring), it respects their “dignity and choice,” *Cohen v. California*, 403 U.S. 15, 24, 91 S.Ct. 1780, 29 L.Ed.2d 284 (1971), and it facilitates the value of “individual self-realization.” Redish, *The Value of Free Speech*, 130 U. Pa. L.Rev. 591, 594 (1982). Corporate speech, however, is derivative speech, speech by proxy. A regulation such as BCRA § 203 may affect the way in which individuals disseminate certain messages through the corporate form, but it does not prevent anyone from speaking in his or her own voice. “Within the realm of [campaign spending] generally,” corporate **\*467** spending is “furthest from the core of political expression.” *Beaumont*, 539 U.S., at 161, n. 8, 123 S.Ct. 2200.

It is an interesting question “who” is even speaking when a business corporation places an advertisement that endorses or attacks a particular candidate. Presumably it is not the customers or employees, who typically have no say in such matters. It cannot realistically be said to be the shareholders, who tend to be far removed from the day-to-day decisions of the firm and whose political preferences may be opaque to management. Perhaps the officers or directors of the corporation have the best claim to be the ones speaking, except their fiduciary duties generally prohibit them from using corporate funds for personal ends. Some individuals associated with the corporation must make the decision to place the ad, but the idea that these individuals are thereby fostering their self-expression or cultivating their critical faculties is fanciful. It is entirely possible that the corporation’s electoral message will *conflict* with their personal convictions. Take away the ability to use general treasury funds for some of those ads, and no one’s autonomy, dignity, or political equality has been impinged upon in the least.

Corporate expenditures are distinguishable from individual expenditures in this respect. I have taken the view that a legislature may place reasonable restrictions on individuals’ electioneering expenditures in the service of the governmental interests explained above, and in recognition of the fact that such restrictions are not direct restraints on speech but rather on its financing. See, e.g., **\*\*973** *Randall*, 548 U.S., at 273, 126 S.Ct. 2479 (dissenting opinion). But those restrictions

concededly present a tougher case, because the primary conduct of actual, flesh-and-blood persons is involved. Some of those individuals might feel that they need to spend large sums of money on behalf of a particular candidate to vindicate the intensity of their electoral preferences. This is obviously not the situation with business corporations, as their routine practice of giving “substantial sums to *both* major national \*468 parties” makes pellucidly clear. *McConnell*, 540 U.S., at 148, 124 S.Ct. 619. “[C]orporate participation” in elections, any business executive will tell you, “is more transactional than ideological.” Supp. Brief for Committee for Economic Development as *Amicus Curiae* 10.

In this transactional spirit, some corporations have affirmatively urged Congress to place limits on their electioneering communications. These corporations fear that officeholders will shake them down for supportive ads, that they will have to spend increasing sums on elections in an ever-escalating arms race with their competitors, and that public trust in business will be eroded. See *id.*, at 10–19. A system that effectively forces corporations to use their shareholders’ money both to maintain access to, and to avoid retribution from, elected officials may ultimately prove more harmful than beneficial to many corporations. It can impose a kind of implicit tax.<sup>73</sup>

In short, regulations such as § 203 and the statute upheld in *Austin* impose only a limited burden on First Amendment freedoms not only because they target a narrow subset of expenditures and leave untouched the broader “public dialogue,” *ante*, at 899, but also because they leave untouched \*469 the speech of natural persons. Recognizing the weakness of a speaker-based critique of *Austin*, the Court places primary emphasis not on the corporation’s right to electioneer, but rather on the listener’s interest in hearing what every possible speaker may have to say. The Court’s central argument is that laws such as § 203 have “‘deprived [the electorate] of information, knowledge and opinion vital to its function.’” *ante*, at 907 (quoting *CIO*, 335 U.S., at 144, 68 S.Ct. 1349 (Rutledge, J., concurring in result)), and this, in turn, “interferes with the ‘open marketplace’ of ideas protected by the First Amendment,” *ante*, at 906 (quoting *New York State Bd. of Elections v. Lopez Torres*, 552 U.S. 196, 208, 128 S.Ct. 791, 169 L.Ed.2d 665 (2008)).

There are many flaws in this argument. If the overriding concern depends on the interests of the audience, surely the public’s perception of the value of corporate speech should be given important weight. That perception today is the same

as it \*\*974 was a century ago when Theodore Roosevelt delivered the speeches to Congress that, in time, led to the limited prohibition on corporate campaign expenditures that is overruled today. See *WRTL*, 551 U.S., at 509–510, 127 S.Ct. 2652 (Souter, J., dissenting) (summarizing President Roosevelt’s remarks). The distinctive threat to democratic integrity posed by corporate domination of politics was recognized at “the inception of the republic” and “has been a persistent theme in American political life” ever since. *Regan* 302. It is only certain Members of this Court, not the listeners themselves, who have agitated for more corporate electioneering.

*Austin* recognized that there are substantial reasons why a legislature might conclude that unregulated general treasury expenditures will give corporations “unfair influence” in the electoral process, 494 U.S., at 660, 110 S.Ct. 1391, and distort public debate in ways that undermine rather than advance the interests of listeners. The legal structure of corporations allows them to amass and deploy financial resources on a scale few natural persons can match. The structure of a business corporation, furthermore, draws a line between the \*470 corporation’s economic interests and the political preferences of the individuals associated with the corporation; the corporation must engage the electoral process with the aim “to enhance the profitability of the company, no matter how persuasive the arguments for a broader or conflicting set of priorities,” Brief for American Independent Business Alliance as *Amicus Curiae* 11; see also ALI, Principles of Corporate Governance: Analysis and Recommendations § 2.01(a), p. 55 (1992) (“[A] corporation ... should have as its objective the conduct of business activities with a view to enhancing corporate profit and shareholder gain”). In a state election such as the one at issue in *Austin*, the interests of nonresident corporations may be fundamentally adverse to the interests of local voters. Consequently, when corporations grab up the prime broadcasting slots on the eve of an election, they can flood the market with advocacy that bears “little or no correlation” to the ideas of natural persons or to any broader notion of the public good, 494 U.S., at 660, 110 S.Ct. 1391. The opinions of real people may be marginalized. “The expenditure restrictions of [2 U.S.C.] § 441b are thus meant to ensure that competition among actors in the political arena is truly competition among ideas.” *MCFL*, 479 U.S., at 259, 107 S.Ct. 616.

In addition to this immediate drowning out of noncorporate voices, there may be deleterious effects that follow soon thereafter. Corporate “domination” of electioneering, *Austin*,

494 U.S., at 659, 110 S.Ct. 1391, can generate the impression that corporations dominate our democracy. When citizens turn on their televisions and radios before an election and hear only corporate electioneering, they may lose faith in their capacity, as citizens, to influence public policy. A Government captured by corporate interests, they may come to believe, will be neither responsive to their needs nor willing to give their views a fair hearing. The predictable result is cynicism and disenchantment: an increased perception that large spenders “‘call the tune’” and a reduced “‘willingness of voters to take part in democratic governance.’” \*471 *McConnell*, 540 U.S., at 144, 124 S.Ct. 619 (quoting *Shrink Missouri*, 528 U.S., at 390, 120 S.Ct. 897). To the extent that corporations are allowed to exert undue influence in electoral races, the speech of the eventual winners of those races may also be chilled. Politicians who fear that a certain corporation can make or break their reelection chances may be cowed into silence about that corporation. On a variety of levels, unregulated corporate electioneering \*\*975 might diminish the ability of citizens to “‘hold officials accountable to the people,” *ante*, at 898, and disserve the goal of a public debate that is “‘uninhibited, robust, and wide-open.” *New York Times Co. v. Sullivan*, 376 U.S. 254, 270, 84 S.Ct. 710, 11 L.Ed.2d 686 (1964). At the least, I stress again, a legislature is entitled to credit these concerns and to take tailored measures in response.

The majority’s unwillingness to distinguish between corporations and humans similarly blinds it to the possibility that corporations’ “war chests” and their special “advantages” in the legal realm, *Austin*, 494 U.S., at 659, 110 S.Ct. 1391 (internal quotation marks omitted), may translate into special advantages in the market for legislation. When large numbers of citizens have a common stake in a measure that is under consideration, it may be very difficult for them to coordinate resources on behalf of their position. The corporate form, by contrast, “provides a simple way to channel rents to only those who have paid their dues, as it were. If you do not own stock, you do not benefit from the larger dividends or appreciation in the stock price caused by the passage of private interest legislation.” Sitkoff, *Corporate Political Speech, Political Extortion, and the Competition for Corporate Charters*, 69 U. Chi. L.Rev. 1103, 1113 (2002). Corporations, that is, are uniquely equipped to seek laws that favor their owners, not simply because they have a lot of money but because of their legal and organizational structure. Remove all restrictions on their electioneering, and the door may be opened to a type of rent seeking that is “‘far more destructive” than what noncorporations are capable of. 472*Ibid*. It is for reasons

such as these that our campaign finance jurisprudence has long appreciated that “‘the ‘differing structures and purposes’ of different entities ‘may require different forms of regulation in order to protect the integrity of the electoral process.’” *NRWC*, 459 U.S., at 210, 103 S.Ct. 552 (quoting *California Medical Assn.*, 453 U.S., at 201, 101 S.Ct. 2712).

The Court’s facile depiction of corporate electioneering assumes away all of these complexities. Our colleagues ridicule the idea of regulating expenditures based on “‘nothing more” than a fear that corporations have a special “‘ability to persuade.” *ante*, at 923 (opinion of ROBERTS, C.J.), as if corporations were our society’s ablest debaters and viewpoint-neutral laws such as § 203 were created to suppress their best arguments. In their haste to knock down yet another straw man, our colleagues simply ignore the fundamental concerns of the *Austin* Court and the legislatures that have passed laws like § 203: to safeguard the integrity, competitiveness, and democratic responsiveness of the electoral process. All of the majority’s theoretical arguments turn on a proposition with undeniable surface appeal but little grounding in evidence or experience, “‘that there is no such thing as too much speech,” *Austin*, 494 U.S., at 695, 110 S.Ct. 1391 (SCALIA, J., dissenting).<sup>74</sup> If individuals in our society had infinite free time to listen to and contemplate every last bit of speech uttered by anyone, anywhere; and if broadcast advertisements had no special ability to influence elections apart from the merits of their arguments (to the extent they make any); and if legislators always operated with nothing less than perfect virtue; then I suppose the majority’s premise would be sound. In the real world, we have seen, corporate domination of the airwaves prior to an election may decrease the average listener’s exposure to \*\*976 relevant viewpoints, and it may diminish citizens’ willingness and capacity to participate in the democratic process.

\*473 None of this is to suggest that corporations can or should be denied an opportunity to participate in election campaigns or in any other public forum (much less that a work of art such as *Mr. Smith Goes to Washington* may be banned), or to deny that some corporate speech may contribute significantly to public debate. What it shows, however, is that *Austin*’s “‘concern about corporate domination of the political process,” *id.*, at 659, 110 S.Ct. 1391, reflects more than a concern to protect governmental interests outside of the First Amendment. It also reflects a concern to *facilitate* First Amendment values by preserving some breathing room around the electoral “‘marketplace” of ideas, *ante*, at 896, 904, 906, 914, 915, the marketplace in which the actual people of



this Nation determine how they will govern themselves. The majority seems oblivious to the simple truth that laws such as § 203 do not merely pit the anticorruption interest against the First Amendment, but also pit competing First Amendment values against each other. There are, to be sure, serious concerns with any effort to balance the First Amendment rights of speakers against the First Amendment rights of listeners. But when the speakers in question are not real people and when the appeal to “First Amendment principles” depends almost entirely on the listeners’ perspective, *ante*, at 886, 912, it becomes necessary to consider how listeners will actually be affected.

In critiquing *Austin*’s antidistortion rationale and campaign finance regulation more generally, our colleagues place tremendous weight on the example of media corporations. See *ante*, at 905 – 907, 911; *ante*, at 917, 923 (opinion of ROBERTS, C.J.); *ante*, at 927 – 928 (opinion of SCALIA, J.). Yet it is not at all clear that *Austin* would permit § 203 to be applied to them. The press plays a unique role not only in the text, history, and structure of the First Amendment but also in facilitating public discourse; as the *Austin* Court explained, “media corporations differ significantly from other corporations in that their resources are devoted to the collection \*474 of information and its dissemination to the public.” 494 U.S., at 667, 110 S.Ct. 1391. Our colleagues have raised some interesting and difficult questions about Congress’ authority to regulate electioneering by the press, and about how to define what constitutes the press. *But that is not the case before us*. Section 203 does not apply to media corporations, and even if it did, Citizens United is not a media corporation. There would be absolutely no reason to consider the issue of media corporations if the majority did not, first, transform Citizens United’s as-applied challenge into a facial challenge and, second, invent the theory that legislatures must eschew all “identity”-based distinctions and treat a local nonprofit news outlet exactly the same as General Motors.<sup>75</sup> This calls to mind George Berkeley’s description of philosophers: “[W]e have first raised a dust, and then complain we cannot see.” *Principles of Human Knowledge/Three Dialogues* 38, ¶ 3 (R. Woolhouse ed.1988).

It would be perfectly understandable if our colleagues feared that a campaign finance \*\*977 regulation such as § 203 may be counterproductive or self-interested, and therefore attended carefully to the choices the Legislature has made. But the majority does not bother to consider such practical matters, or even to consult a record; it simply stipulates that “enlightened self-government” can arise only in the absence

of regulation. *Ante*, at 898. In light of the distinctive features of corporations identified in *Austin*, there is no valid basis for this assumption. The marketplace of ideas is not actually a place where items—or laws—are meant to be bought and sold, and when we move from the realm of economics \*475 to the realm of corporate electioneering, there may be no “reason to think the market ordering is intrinsically good at all,” Strauss 1386.

The Court’s blinkered and aphoristic approach to the First Amendment may well promote corporate power at the cost of the individual and collective self-expression the Amendment was meant to serve. It will undoubtedly cripple the ability of ordinary citizens, Congress, and the States to adopt even limited measures to protect against corporate domination of the electoral process. Americans may be forgiven if they do not feel the Court has advanced the cause of self-government today.

## 2. Shareholder Protection

There is yet another way in which laws such as § 203 can serve First Amendment values. Interwoven with *Austin*’s concern to protect the integrity of the electoral process is a concern to protect the rights of shareholders from a kind of coerced speech: electioneering expenditures that do not “reflec [t] [their] support.” 494 U.S., at 660–661, 110 S.Ct. 1391. When corporations use general treasury funds to praise or attack a particular candidate for office, it is the shareholders, as the residual claimants, who are effectively footing the bill. Those shareholders who disagree with the corporation’s electoral message may find their financial investments being used to undermine their political convictions.

The PAC mechanism, by contrast, helps ensure that those who pay for an electioneering communication actually support its content and that managers do not use general treasuries to advance personal agendas. *Ibid*. It “ ‘allows corporate political participation without the temptation to use corporate funds for political influence, quite possibly at odds with the sentiments of some shareholders or members.’ ” *McConnell*, 540 U.S., at 204, 124 S.Ct. 619 (quoting *Beaumont*, 539 U.S., at 163, 123 S.Ct. 2200). A rule that privileges the use of PACs thus does more than facilitate the political speech of like-minded shareholders; \*476 it also curbs the rent seeking behavior of executives and respects the views of dissenters. *Austin*’s acceptance of restrictions on general treasury spending “simply allows people who have



invested in the business corporation for purely economic reasons”—the vast majority of investors, one assumes—to avoid being taken advantage of, without sacrificing their economic objectives.” Winkler, *Beyond Bellotti*, 32 Loyola (LA) L.Rev. 133, 201 (1998).

The concern to protect dissenting shareholders and union members has a long history in campaign finance reform. It provided a central motivation for the Tillman Act in 1907 and subsequent legislation, see *Pipefitters v. United States*, 407 U.S. 385, 414–415, 92 S.Ct. 2247, 33 L.Ed.2d 11 (1972); Winkler, 92 Geo. L. J., at 887–900, and it has been endorsed in a long line of our cases, see, e.g., *McConnell*, 540 U.S., at 204–205, 124 S.Ct. 619; *Beaumont*, 539 U.S., at 152–154, 123 S.Ct. 2200; *MCFL*, 479 U.S., at 258, 107 S.Ct. 616; *NRWC*, 459 U.S., at 207–208, 103 S.Ct. 552; \*\*978 *Pipefitters*, 407 U.S., at 414–416, 92 S.Ct. 2247; see also n. 60, *supra*. Indeed, we have unanimously recognized the governmental interest in “protect[ing] the individuals who have paid money into a corporation or union for purposes other than the support of candidates from having that money used to support political candidates to whom they may be opposed.” *NRWC*, 459 U.S., at 207–208, 103 S.Ct. 552.

The Court dismisses this interest on the ground that abuses of shareholder money can be corrected “through the procedures of corporate democracy,” *ante*, at 911 (internal quotation marks omitted), and, it seems, through Internet-based disclosures, *ante*, at 916.<sup>76</sup> I fail to understand \*477 how this addresses the concerns of dissenting union members, who will also be affected by today’s ruling, and I fail to understand why the Court is so confident in these mechanisms. By “corporate democracy,” presumably the Court means the rights of shareholders to vote and to bring derivative suits for breach of fiduciary duty. In practice, however, many corporate lawyers will tell you that “these rights are so limited as to be almost nonexistent,” given the internal authority wielded by boards and managers and the expansive protections afforded by the business judgment rule. *Blair & Stout* 320; see also *id.*, at 298–315; Winkler, 32 Loyola (LA) L.Rev., at 165–166, 199–200. Modern technology may help make it easier to track corporate activity, including electoral advocacy, but it is utopian to believe that it solves the problem. Most American households that own stock do so through intermediaries such as mutual funds and pension plans, see Evans, *A Requiem for the Retail Investor?* 95 Va. L.Rev. 1105 (2009), which makes it more difficult both to monitor and to alter particular holdings. Studies show that a majority of individual investors make no trades at all during a given year. *Id.*, at 1117.

Moreover, if the corporation in question operates a PAC, an investor who sees the company’s ads may not know whether they are being funded through the PAC or through the general treasury.

If and when shareholders learn that a corporation has been spending general treasury money on objectionable electioneering, they can divest. Even assuming that they reliably learn as much, however, this solution is only partial. The injury to the shareholders’ expressive rights has already occurred; they might have preferred to keep that corporation’s stock in their portfolio for any number of economic reasons; and they may incur a capital gains tax or other penalty from selling their shares, changing their pension plan, or the like. The shareholder protection rationale has been criticized as underinclusive, in that corporations also spend money on lobbying and charitable contributions in ways that any particular \*478 shareholder might disapprove. But those expenditures do not implicate the selection of public officials, an area in which “the interests of unwilling ... corporate shareholders [in not being] forced to subsidize that speech” “are at their zenith.” *Austin*, 494 U.S., at 677, 110 S.Ct. 1391 (Brennan, J., concurring). And in any event, the question is whether shareholder protection provides a basis for regulating expenditures in the weeks before an election, not whether additional types of corporate communications \*\*979 might similarly be conditioned on voluntariness.

Recognizing the limits of the shareholder protection rationale, the *Austin* Court did not hold it out as an adequate and independent ground for sustaining the statute in question. Rather, the Court applied it to reinforce the antidistortion rationale, in two main ways. First, the problem of dissenting shareholders shows that even if electioneering expenditures can advance the political views of some members of a corporation, they will often compromise the views of others. See, e.g., *id.*, at 663, 110 S.Ct. 1391 (discussing risk that corporation’s “members may be ... reluctant to withdraw as members even if they disagree with [its] political expression”). Second, it provides an additional reason, beyond the distinctive legal attributes of the corporate form, for doubting that these “expenditures reflect actual public support for the political ideas espoused,” *id.*, at 660, 110 S.Ct. 1391. The shareholder protection rationale, in other words, bolsters the conclusion that restrictions on corporate electioneering can serve both speakers’ and listeners’ interests, as well as the anticorruption interest. And it supplies yet another reason why corporate expenditures merit less protection than individual expenditures.

V

Today's decision is backwards in many senses. It elevates the majority's agenda over the litigants' submissions, facial attacks over as-applied claims, broad constitutional theories \*479 over narrow statutory grounds, individual dissenting opinions over precedential holdings, assertion over tradition, absolutism over empiricism, rhetoric over reality. Our colleagues have arrived at the conclusion that *Austin* must be overruled and that § 203 is facially unconstitutional only after mischaracterizing both the reach and rationale of those authorities, and after bypassing or ignoring rules of judicial restraint used to cabin the Court's lawmaking power. Their conclusion that the societal interest in avoiding corruption and the appearance of corruption does not provide an adequate justification for regulating corporate expenditures on candidate elections relies on an incorrect description of that interest, along with a failure to acknowledge the relevance of established facts and the considered judgments of state and federal legislatures over many decades.

In a democratic society, the longstanding consensus on the need to limit corporate campaign spending should outweigh the wooden application of judge-made rules. The majority's rejection of this principle "elevate[s] corporations to a level of deference which has not been seen at least since the days when substantive due process was regularly used to invalidate regulatory legislation thought to unfairly impinge upon established economic interests." *Bellotti*, 435 U.S., at 817, n. 13, 98 S.Ct. 1407 (White, J., dissenting). At bottom, the Court's opinion is thus a rejection of the common sense of the American people, who have recognized a need to prevent corporations from undermining self-government since the founding, and who have fought against the distinctive corrupting potential of corporate electioneering since the days of Theodore Roosevelt. It is a strange time to repudiate that common sense. While American democracy is imperfect, few outside the majority of this Court would have thought its flaws included a dearth of corporate money in politics.

I would affirm the judgment of the District Court.

\*480 Justice THOMAS, concurring in part and dissenting in part.

I join all but Part IV of the Court's opinion.

\*\*980 Political speech is entitled to robust protection under the First Amendment. Section 203 of the Bipartisan Campaign Reform Act of 2002 (BCRA) has never been reconcilable with that protection. By striking down § 203, the Court takes an important first step toward restoring full constitutional protection to speech that is "indispensable to the effective and intelligent use of the processes of popular government." *McConnell v. Federal Election Comm'n*, 540 U.S. 93, 265, 124 S.Ct. 619, 157 L.Ed.2d 491 (2003) (THOMAS, J., concurring in part, concurring in judgment in part, and dissenting in part) (internal quotation marks omitted). I dissent from Part IV of the Court's opinion, however, because the Court's constitutional analysis does not go far enough. The disclosure, disclaimer, and reporting requirements in BCRA §§ 201 and 311 are also unconstitutional. See *id.*, at 275–277, and n. 10, 124 S.Ct. 619.

Congress may not abridge the "right to anonymous speech" based on the "simple interest in providing voters with additional relevant information." *id.*, at 276, 124 S.Ct. 619 (quoting *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 348, 115 S.Ct. 1511, 131 L.Ed.2d 426 (1995)). In continuing to hold otherwise, the Court misapprehends the import of "recent events" that some *amici* describe "in which donors to certain causes were blacklisted, threatened, or otherwise targeted for retaliation." *Ante*, at 916. The Court properly recognizes these events as "cause for concern," *ibid.*, but fails to acknowledge their constitutional significance. In my view, *amici's* submissions show why the Court's insistence on upholding §§ 201 and 311 will ultimately prove as misguided (and ill fated) as was its prior approval of § 203.

*Amici's* examples relate principally to Proposition 8, a state ballot proposition that California voters narrowly passed in the 2008 general election. Proposition 8 amended \*481 California's Constitution to provide that "[o]nly marriage between a man and a woman is valid or recognized in California." Cal. Const., Art. I, § 7.5. Any donor who gave more than \$100 to any committee supporting or opposing Proposition 8 was required to disclose his full name, street address, occupation, employer's name (or business name, if self-employed), and the total amount of his contributions.<sup>1</sup> See Cal. Govt.Code Ann. § 84211(f) (West 2005). The California secretary of state was then required to post this information on the Internet. See §§ 84600–84601; §§ 84602–84602.1 (West Supp.2010); §§ 84602.5–84604 (West 2005); § 85605 (West Supp.2010); §§ 84606–84609 (West 2005).

Some opponents of Proposition 8 compiled this information and created Web sites with maps showing the locations of homes or businesses of Proposition 8 supporters. Many supporters (or their customers) suffered property damage, or threats of physical violence or death, as a result. They cited these incidents in a complaint they filed after the 2008 election, seeking to invalidate California's mandatory disclosure laws. Supporters recounted being told: " 'Consider yourself lucky. If I had a gun I would have gunned you down along with each and every other supporter,' " or, " 'we have plans for you and your friends.' " Complaint in **\*\*981** *ProtectMarriage.com—Yes on 8 v. Bowen*, Case No. 2:09-cv-00058-MCE-DAD (ED Cal.), ¶ 31. Proposition 8 opponents also allegedly harassed the measure's supporters by defacing or damaging their property. *Id.*, ¶ 32. Two religious organizations supporting Proposition 8 reportedly received through the mail envelopes containing a white powdery substance. *Id.*, ¶ 33.

**\*482** Those accounts are consistent with media reports describing Proposition 8–related retaliation. The director of the nonprofit California Musical Theater gave \$1,000 to support the initiative; he was forced to resign after artists complained to his employer. Lott & Smith, Donor Disclosure Has Its Downsides, Wall Street Journal, Dec. 26, 2008, p. A13. The director of the Los Angeles Film Festival was forced to resign after giving \$1,500 because opponents threatened to boycott and picket the next festival. *Ibid.* And a woman who had managed her popular, family-owned restaurant for 26 years was forced to resign after she gave \$100, because "throng[s] of [angry] protesters" repeatedly arrived at the restaurant and "shout[ed] 'shame on you' at customers." Lopez, Prop. 8 Stance Upends Her Life, Los Angeles Times, Dec. 14, 2008, p. B1. The police even had to "arriv[e] in riot gear one night to quell the angry mob" at the restaurant. *Ibid.* Some supporters of Proposition 8 engaged in similar tactics: one real estate businessman in San Diego who had donated to a group opposing Proposition 8 "received a letter from the Prop. 8 Executive Committee threatening to publish his company's name if he didn't also donate to the 'Yes on 8' campaign." Donor Disclosure, *supra*, at A13.

The success of such intimidation tactics has apparently spawned a cottage industry that uses forcibly disclosed donor information to *pre-empt* citizens' exercise of their First Amendment rights. Before the 2008 Presidential election, a "newly formed nonprofit group ... plann[ed] to confront donors to conservative groups, hoping to create a chilling effect that will dry up contributions." Luo, Group Plans

Campaign Against G.O.P. Donors, N.Y. Times, Aug. 8, 2008, p. A15. Its leader, "who described his effort as 'going for the jugular,' " detailed the group's plan to send a "warning letter ... alerting donors who might be considering giving to right-wing groups to a variety of potential dangers, including **\*483** legal trouble, public exposure and watchdog groups digging through their lives." *Ibid.*

These instances of retaliation sufficiently demonstrate why this Court should invalidate mandatory disclosure and reporting requirements. But *amici* present evidence of yet another reason to do so—the threat of retaliation from *elected officials*. As *amici*'s submissions make clear, this threat extends far beyond a single ballot proposition in California. For example, a candidate challenging an incumbent state attorney general reported that some members of the State's business community feared donating to his campaign because they did not want to cross the incumbent; in his words, " 'I go to so many people and hear the same thing: 'I sure hope you beat [the incumbent], but I can't afford to have my name on your records. He might come after me next.' " " Strassel, Challenging Spitzerism at the Polls, Wall Street Journal, Aug. 1, 2008, p. A11. The incumbent won reelection in 2008.

My point is not to express any view on the merits of the political controversies I describe. Rather, it is to demonstrate—using real-world, recent examples—the fallacy in the Court's conclusion that "[d]isclaimer and disclosure requirements ... impose no ceiling on campaign-related activities, and do not prevent anyone from speaking." *Ante*, at 914 (internal quotation marks and citation omitted). Of **\*\*982** course they do. Disclaimer and disclosure requirements enable private citizens and elected officials to implement political strategies *specifically calculated* to curtail campaign-related activity and prevent the lawful, peaceful exercise of First Amendment rights.

The Court nevertheless insists that as-applied challenges to disclosure requirements will suffice to vindicate those speech rights, as long as potential plaintiffs can "show a reasonable probability that disclosure ... will subject them to threats, harassment, or reprisals from either Government officials **\*484** or private parties." *Ante*, at 914 (internal quotation marks omitted). But the Court's opinion itself proves the irony in this compromise. In correctly explaining why it must address the facial constitutionality of § 203, see *ante*, at 888–897, the Court recognizes that "[t]he First Amendment does not permit laws that force speakers to ... seek declaratory rulings before discussing the most salient political issues of

our day,” *ante*, at 889; that as-applied challenges to § 203 “would require substantial litigation over an extended time” and result in an “interpretive process [that] itself would create an inevitable, pervasive, and serious risk of chilling protected speech pending the drawing of fine distinctions that, in the end, would themselves be questionable,” *ante*, at 891; that “a court would be remiss in performing its duties were it to accept an unsound principle merely to avoid the necessity of making a broader ruling,” *ante*, at 892; and that avoiding a facial challenge to § 203 “would prolong the substantial, nationwide chilling effect” that § 203 causes, *ante*, at 894. This logic, of course, applies equally to as-applied challenges to §§ 201 and 311.

Irony aside, the Court’s promise that as-applied challenges will adequately protect speech is a hollow assurance. Now more than ever, §§ 201 and 311 will chill protected speech because—as California voters can attest—“the advent of the Internet” enables “prompt disclosure of expenditures,” which “provide[s]” political opponents “with the information needed” to intimidate and retaliate against their foes. *Ante*, at 916. Thus, “disclosure permits citizens ... to react to the speech of [their political opponents] in a proper”—or

undeniably *improper*—“way” long before a plaintiff could prevail on an as-applied challenge.<sup>2</sup> *Ante*, at 916.

\*485 I cannot endorse a view of the First Amendment that subjects citizens of this Nation to death threats, ruined careers, damaged or defaced property, or pre-emptive and threatening warning letters as the price for engaging in “core political speech, the ‘primary object of First Amendment protection.’ ” *McConnell*, 540 U.S., at 264, 124 S.Ct. 619 (THOMAS, J., concurring in part, concurring in judgment in part, and dissenting in part) (quoting *Nixon v. Shrink Missouri Government PAC*, 528 U.S. 377, 410–411, 120 S.Ct. 897, 145 L.Ed.2d 886 (2000) (THOMAS, J., dissenting)). Accordingly, I respectfully dissent from the Court’s judgment upholding BCRA §§ 201 and 311.

#### All Citations

558 U.S. 310, 130 S.Ct. 876, 175 L.Ed.2d 753, 187 L.R.R.M. (BNA) 2961, 78 USLW 4078, 159 Lab.Cas. P 10,166, 10 Cal. Daily Op. Serv. 776, 2010 Daily Journal D.A.R. 949, 22 Fla. L. Weekly Fed. S 73

#### Footnotes

- \* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U.S. 321, 337, 26 S.Ct. 282, 50 L.Ed. 499.
- 1 The dissent suggests that I am “much too quick” to reach this conclusion because I “ignore” Citizens United’s narrower arguments. *Post*, at 936, n. 12. But in fact I do not ignore those arguments; on the contrary, I (and my colleagues in the majority) appropriately consider and reject them on their merits, before addressing Citizens United’s broader claims. *Supra*, at 918 – 919; *ante*, at 888 – 892.
- 2 See also, e.g., R. Hasen, The Supreme Court and Election Law: Judging Equality from *Baker v. Carr* to *Bush v. Gore* 114 (2003) (“*Austin* represents the first and only case [before *McConnell*] in which a majority of the Court accepted, in deed if not in word, the equality rationale as a permissible state interest”); Strauss, Corruption, Equality, and Campaign Finance Reform, 94 Colum. L.Rev. 1369, and n. 1 (1994) (noting that *Austin*’s rationale was based on equalizing political speech); Ashdown, Controlling Campaign Spending and the “New Corruption”: Waiting for the Court, 44 Vand. L.Rev. 767, 781 (1991); Eule, Promoting Speaker Diversity: *Austin* and Metro Broadcasting, 1990 S.Ct. Rev. 105, 108–111.
- 1 Justice THOMAS does not join Part IV of the Court’s opinion.
- 2 The dissent protests that 1791 rather than 1800 should be the relevant date, and that “[m]ore than half of the century’s total business charters were issued between 1796 and 1800.” *Post*, at 949, n. 53. I used 1800 only because the dissent did. But in any case, it is surely fanciful to think that a consensus of hostility toward corporations was transformed into general favor at some magical moment between 1791 and 1796.
- 3 “[P]eople in 1800 identified corporations with franchised monopolies.” L. Friedman, A History of American Law 194 (2d ed.1985) (hereinafter Friedman). “The chief cause for the changed popular attitude towards business corporations that marked the opening of the nineteenth century was the elimination of their inherent monopolistic character. This was accomplished primarily by an extension of the principle of free incorporation under general laws.” 1 W. Fletcher, Cyclopedia of the Law of Corporations § 2, p. 8 (rev. ed.2006).
- 4 At times (though not always) the dissent seems to exclude such non-“business corporations” from its denial of free-speech rights. See *post*, at 949 – 950. Finding in a seemingly categorical text a distinction between the rights of business



corporations and the rights of nonbusiness corporations is even more imaginative than finding a distinction between the rights of *all* corporations and the rights of other associations.

- 5 The best the dissent can come up with is that "[p]ostratification practice" supports its reading of the First Amendment. *Post*, at 951, n. 56. For this proposition, the dissent cites Justice White's statement (in dissent) that "[t]he common law was generally interpreted as prohibiting corporate political participation," *First Nat. Bank of Boston v. Bellotti*, 435 U.S. 765, 819, 98 S.Ct. 1407, 55 L.Ed.2d 707 (1978). The sole authority Justice White cited for this proposition, *id.*, at 819, n. 14, 98 S.Ct. 1407, was a law-review note that made no such claim. To the contrary, it stated that the cases dealing with the propriety of corporate political expenditures were "few." Note, Corporate Political Affairs Programs, 70 Yale L. J. 821, 852 (1961). More specifically, the note cites only two holdings to that effect, one by a Federal District Court, and one by the Supreme Court of Montana. *Ibid.*, n. 197. Of course even if the common law was "generally interpreted" to prohibit corporate political expenditures as ultra vires, that would have nothing to do with whether political expenditures that were authorized by a corporation's charter could constitutionally be suppressed.

As additional "[p]ostratification practice," the dissent notes that the Court "did not recognize any First Amendment protections for corporations until the middle part of the 20th century." *Post*, at 951, n. 56. But it did that in *Grosjean v. American Press Co.*, 297 U.S. 233, 56 S.Ct. 444, 80 L.Ed. 660 (1936), a case involving freedom of the press—which the dissent acknowledges *did* cover corporations from the outset. The relative recency of that first case is unsurprising. All of our First Amendment jurisprudence was slow to develop. We did not consider application of the First Amendment to speech restrictions other than prior restraints until 1919, see *Schenck v. United States*, 249 U.S. 47, 39 S.Ct. 247, 63 L.Ed. 470; we did not invalidate a state law on First Amendment grounds until 1931, see *Stromberg v. California*, 283 U.S. 359, 51 S.Ct. 532, 75 L.Ed. 1117, and a federal law until 1965, see *Lamont v. Postmaster General*, 381 U.S. 301, 85 S.Ct. 1493, 14 L.Ed.2d 398.

- 6 The dissent seeks to avoid this conclusion (and to turn a liability into an asset) by interpreting the Freedom of the Press Clause to refer to the institutional press (thus demonstrating, according to the dissent, that the Founders "did draw distinctions—explicit distinctions—between types of 'speakers,' or speech outlets or forms"). *Post*, at 951 – 952, and n. 57. It is passing strange to interpret the phrase "the freedom of speech, or of the press" to mean, not everyone's right to speak or publish, but rather everyone's right to speak or the institutional press's right to publish. No one thought that is what it meant. Patriot Noah Webster's 1828 dictionary contains, under the word "press," the following entry: "Liberty of the press, in civil policy, is the free right of publishing books, pamphlets or papers without previous restraint; or the unrestrained right which every citizen enjoys of publishing his thoughts and opinions, subject only to punishment for publishing what is pernicious to morals or to the peace of the state." 2 American Dictionary of the English Language (1828) (reprinted 1970).

As the Court's opinion describes, *ante*, at 905 – 906, our jurisprudence agrees with Noah Webster and contradicts the dissent.

"The liberty of the press is not confined to newspapers and periodicals. It necessarily embraces pamphlets and leaflets.... The press in its historical connotation comprehends every sort of publication which affords a vehicle of information and opinion." *Lovell v. City of Griffin*, 303 U.S. 444, 452, 58 S.Ct. 666, 82 L.Ed. 949 (1938).

- 7 The dissent says that "'speech'" refers to oral communications of human beings, and since corporations are not human beings they cannot speak. *Post*, at 950, n. 55. This is sophistry. The authorized spokesman of a corporation is a human being, who speaks on behalf of the human beings who have formed that association—just as the spokesman of an unincorporated association speaks on behalf of its members. The power to publish thoughts, no less than the power to speak thoughts, belongs only to human beings, but the dissent sees no problem with a corporation's enjoying the freedom of the press.

The same footnote asserts that "it has been 'claimed that the notion of institutional speech ... did not exist in post-revolutionary America.'" This is quoted from a law-review article by a Bigelow Fellow at the University of Chicago (Fagundes, State Actors as First Amendment Speakers, 100 Nw. U.L.Rev. 1637, 1654 (2006)), which offers as the sole support for its statement a treatise dealing with government speech, M. Yudof, When Government Speaks 42–50 (1983). The cited pages of that treatise provide no support whatever for the statement—unless, as seems overwhelmingly likely, the "institutional speech" referred to was speech by the subject of the law-review article, governmental institutions.

The other authority cited in the footnote, a law-review article by a professor at Washington and Lee Law School, Bezanson, Institutional Speech, 80 Iowa L.Rev. 735, 775 (1995), in fact contradicts the dissent, in that it would accord free-speech protection to associations.

- 1 Specifically, Part I, *infra*, at 931 – 938, addresses the procedural history of the case and the narrower grounds of decision the majority has bypassed. Part II, *infra*, at 938 – 942, addresses *stare decisis*. Part III, *infra*, at 942 – 961, addresses

the Court's assumptions that BCRA "bans" corporate speech, that identity-based distinctions may not be drawn in the political realm, and that *Austin* and *McConnell* were outliers in our First Amendment tradition. Part IV, *infra*, at 961 – 979, addresses the Court's treatment of the anticorruption, antidistortion, and shareholder protection rationales for regulating corporate electioneering.

- 2 See *Yee v. Escondido*, 503 U.S. 519, 535, 112 S.Ct. 1522, 118 L.Ed.2d 153 (1992) ("[U]nder this Court's Rule 14.1(a), only the questions set forth in the petition, or fairly included therein, will be considered by the Court" (internal quotation marks and alteration omitted)); *Wood v. Allen*, *ante*, at 304 130 S.Ct. 841, 175 L.Ed.2d 738, 2010 WL 173369 \*5 ("[T]he fact that petitioner discussed [an] issue in the text of his petition for certiorari does not bring it before us. Rule 14.1(a) requires that a subsidiary question be fairly included in the *question presented* for our review" (internal quotation marks and brackets omitted)); *Cooper Industries, Inc. v. Aviall Services, Inc.*, 543 U.S. 157, 168–169, 125 S.Ct. 577, 160 L.Ed.2d 548 (2004) ("We ordinarily do not decide in the first instance issues not decided below" (internal quotation marks omitted)).
- 3 The majority states that, in denying Citizens United's motion for a preliminary injunction, the District Court "addressed" the facial validity of BCRA § 203. *Ante*, at 892 – 893. That is true, in the narrow sense that the court observed the issue was foreclosed by *McConnell v. FEC*, 540 U.S. 93, 124 S.Ct. 619, 157 L.Ed.2d 491 (2003). See 530 F.Supp.2d 274, 278 (D.D.C.2008) (*per curiam*). Yet as explained above, Citizens United subsequently dismissed its facial challenge, so that by the time the District Court granted the Federal Election Commission's (FEC) motion for summary judgment, App. 261a–262a, any question about statutory validity had dropped out of the case. That latter ruling by the District Court was the "final decision" from which Citizens United appealed to this Court under BCRA § 403(a)(3). As regards the lower court decision that has come before us, the claim that § 203 is facially unconstitutional was neither pressed nor passed upon in any form.
- 4 Shortly before Citizens United mooted the issue by abandoning its facial challenge, the Government advised the District Court that it "require[d] time to develop a factual record regarding [the] facial challenge." 1:07–cv–2240–RCL–RWR, Docket Entry No. 47, p. 4 (Mar. 26, 2008). By reinstating a claim that Citizens United abandoned, the Court gives it a perverse litigating advantage over its adversary, which was deprived of the opportunity to gather and present information necessary to its rebuttal.
- 5 In fact, we do not even have a good evidentiary record of how § 203 has been affecting Citizens United, which never submitted to the District Court the details of *Hillary's* funding or its own finances. We likewise have no evidence of how § 203 and comparable state laws were expected to affect corporations and unions in the future. It is true, as the majority points out, that the *McConnell* Court evaluated the facial validity of § 203 in light of an extensive record. See *ante*, at 893 – 894. But that record is not before us in this case. And in any event, the majority's argument for striking down § 203 depends on its contention that the statute has proved too "chilling" in practice—and in particular on the contention that the controlling opinion in *WRTL*, 551 U.S. 449, 127 S.Ct. 2652, 168 L.Ed.2d 329 (2007), failed to bring sufficient clarity and "breathing space" to this area of law. See *ante*, at 892, 894 – 897. We have no record with which to assess that claim. The Court complains at length about the burdens of complying with § 203, but we have no meaningful evidence to show how regulated corporations and unions have experienced its restrictions.
- 6 Our cases recognize a "type of facial challenge in the First Amendment context under which a law may be overturned as impermissibly overbroad because a substantial number of its applications are unconstitutional." *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442, 449, n. 6, 128 S.Ct. 1184, 170 L.Ed.2d 151 (2008) (internal quotation marks omitted). Citizens United has not made an overbreadth argument, and "[w]e generally do not apply the strong medicine of overbreadth analysis where the parties fail to describe the instances of arguable overbreadth of the contested law," *ibid.* (internal quotation marks omitted). If our colleagues nonetheless concluded that § 203's fatal flaw is that it affects too much protected speech, they should have invalidated it for overbreadth and given guidance as to which applications are permissible, so that Congress could go about repairing the error.
- 7 Also perplexing is the majority's attempt to pass blame to the Government for its litigating position. By "hold[ing] out the possibility of ruling for Citizens United on a narrow ground yet refrain[ing] from adopting that position," the majority says, the Government has caused "added uncertainty [that] demonstrates the necessity to address the question of statutory validity." *Ante*, at 895. Our colleagues have apparently never heard of an alternative argument. Like every litigant, the Government would prefer to win its case outright; failing that, it would prefer to lose on a narrow ground. The fact that there are numerous different ways this case could be decided, and that the Government acknowledges as much, does not demonstrate anything about the propriety of a facial ruling.
- 8 The majority's "chilling" argument is particularly inapposite with respect to 2 U.S.C. § 441b's longstanding restriction on the use of corporate general treasury funds for express advocacy. If there was ever any significant uncertainty about what counts as the functional equivalent of express advocacy, there has been little doubt about what counts as express

advocacy since the “magic words” test of *Buckley v. Valeo*, 424 U.S. 1, 44, n. 52, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976) (*per curiam*). Yet even though Citizens United’s briefs never once mention § 441b’s restriction on express advocacy; even though this restriction does not generate chilling concerns; and even though no one has suggested that *Hillary* counts as express advocacy; the majority nonetheless reaches out to opine that this statutory provision is “invalid” as well. *Ante*, at 913.

- 9 The majority adds that the distinction between facial and as-applied challenges does not have “some automatic effect” that mechanically controls the judicial task. *Ante*, at 893. I agree, but it does not follow that in any given case we should ignore the distinction, much less invert it.
- 10 Professor Fallon proposes an intricate answer to this question that the majority ignores. Fallon 1327–1359. It bears mention that our colleagues have previously cited Professor Fallon’s article for the exact opposite point from the one they wish to make today. In *Gonzales v. Carhart*, 550 U.S. 124, 127 S.Ct. 1610, 167 L.Ed.2d 480 (2007), the Court explained that “[i]t is neither our obligation nor within our traditional institutional role to resolve questions of constitutionality with respect to each potential situation that might develop,” and “[f]or this reason, ‘[a]s-applied challenges are the basic building blocks of constitutional adjudication.’” *Id.*, at 168, 127 S.Ct. 1610 (opinion for the Court by KENNEDY, J.) (quoting Fallon 1328 (second alteration in original)).
- 11 Internal Revenue Code § 501(c)(4) applies, *inter alia*, to nonprofit organizations “operated exclusively for the promotion of social welfare, ... the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes.”
- 12 THE CHIEF JUSTICE is therefore much too quick when he suggests that, “[e]ven if considered in as-applied terms, a holding in this case that the Act may not be applied to Citizens United—because corporations as well as individuals enjoy the pertinent First Amendment rights—would mean that any other corporation raising the same challenge would also win.” *Ante*, at 919 (concurring opinion). That conclusion would only follow if the Court were to ignore Citizens United’s plausible as-applied arguments and instead take the implausible position that *all* corporations and *all* types of expenditures enjoy the same First Amendment protections, which *always* trump the interests in regulation. At times, the majority appears to endorse this extreme view. At other times, however, it appears to suggest that nonprofit corporations have a better claim to First Amendment protection than for-profit corporations, see *ante*, at 897, 907, “advocacy” organizations have a better claim than other nonprofits, *ante*, at 897, domestic corporations have a better claim than foreign corporations, *ante*, at 911 – 912, small corporations have a better claim than large corporations, *ante*, at 906 – 908, and printed matter has a better claim than broadcast communications, *ante*, at 904. The majority never uses a multinational business corporation in its hypotheticals.
- 13 The Court entirely ignores this statutory argument. It concludes that § 203 applies to *Hillary* on the basis of the film’s content, *ante*, at 889 – 890, without considering the possibility that § 203 does not apply to video-on-demand transmissions generally.
- 14 See *Colorado Right to Life Comm., Inc. v. Coffman*, 498 F.3d 1137, 1148 (C.A.10 2007) (adopting this rule and noting that “every other circuit to have addressed this issue” has done likewise); Brief for Independent Sector as *Amicus Curiae* 10–11 (collecting cases). The Court rejects this solution in part because the Government “merely suggest[s] it” and “does not say that it agrees with the interpretation.” *Ante*, at 892. Our colleagues would thus punish a defendant for showing insufficient excitement about a ground it has advanced, at the same time that they decide the case on a ground the plaintiff expressly abandoned. The Court also protests that a *de minimis* standard would “requir[e] intricate case-by-case determinations.” *Ante*, at 892. But *de minimis* tests need not be intricate at all. A test that granted MCFL status to § 501(c)(4) organizations if they received less than a fixed dollar amount of business donations in the previous year, or if such donations represent less than a fixed percentage of their total assets, would be perfectly easy to understand and administer.
- 15 Another bypassed ground, not briefed by the parties, would have been to revive the Snowe–Jeffords Amendment in BCRA § 203(c), allowing certain nonprofit corporations to pay for electioneering communications with general treasury funds, to the extent they can trace the payments to individual contributions. See Brief for National Rifle Association as *Amicus Curiae* 5–15 (arguing forcefully that Congress intended this result).
- 16 THE CHIEF JUSTICE finds our discussion of these narrower solutions “quite perplexing” because we suggest that the Court should “latch on to one of them in order to avoid reaching the broader constitutional question,” without doing the same ourselves. *Ante*, at 918 – 919. There is nothing perplexing about the matter, because we are not similarly situated to our colleagues in the majority. We do not share their view of the First Amendment. Our reading of the Constitution would not lead us to strike down any statutes or overturn any precedents in this case, and we therefore have no occasion to practice constitutional avoidance or to vindicate Citizens United’s as-applied challenge. Each of the arguments made



above is surely at least as strong as the statutory argument the Court accepted in last year's Voting Rights Act case, *Northwest Austin Municipal Util. Dist. No. One v. Holder*, 557 U.S. 193, 129 S.Ct. 2504, 174 L.Ed.2d 140 (2009).

- 17 I will have more to say shortly about the merits—about why *Austin* and *McConnell* are not doctrinal outliers, as the Court contends, and why their logic is not only defensible but also compelling. For present purposes, I limit the discussion to *stare-decisis*-specific considerations.
- 18 THE CHIEF JUSTICE suggests that *Austin* has been undermined by subsequent dissenting opinions. *Ante*, at 934. Under this view, it appears that the more times the Court stands by a precedent in the face of requests to overrule it, the weaker that precedent becomes. THE CHIEF JUSTICE further suggests that *Austin* “is uniquely destabilizing because it threatens to subvert our Court’s decisions even outside” its particular facts, as when we applied its reasoning in *McConnell*. *Ante*, at 922. Once again, the theory seems to be that the more we utilize a precedent, the more we call it into question. For those who believe *Austin* was correctly decided—as the Federal Government and the States have long believed, as the majority of Justices to have served on the Court since *Austin* have believed, and as we continue to believe—there is nothing “destabilizing” about the prospect of its continued application. It is gutting campaign finance laws across the country, as the Court does today, that will be destabilizing.
- 19 Additionally, the majority cites some recent scholarship challenging the historical account of campaign finance law given in *United States v. Automobile Workers*, 352 U.S. 567, 77 S.Ct. 529, 1 L.Ed.2d 563 (1957). *Ante*, at 912. *Austin* did not so much as allude to this historical account, much less rely on it. Even if the scholarship cited by the majority is correct that certain campaign finance reforms were less deliberate or less benignly motivated than *Automobile Workers* suggested, the point remains that this body of law has played a significant and broadly accepted role in American political life for decades upon decades.
- 20 See Brief for State of Montana et al. as *Amici Curiae* 5–13; see also Supp. Brief for Senator John McCain et al. as *Amici Curiae* 1a–8a (listing 24 States that presently limit or prohibit independent electioneering expenditures from corporate general treasuries).
- 21 Magleby, The Importance of the Record in *McConnell v. FEC*, 3 Election L. J. 285 (2004).
- 22 To be sure, the majority may respond that Congress can correct the imbalance by removing BCRA’s soft-money limits. Cf. Tr. of Oral Arg. 24 (Sept. 9, 2009) (query of Kennedy, J.). But this is no response to any legislature that takes campaign finance regulation seriously. It merely illustrates the breadth of the majority’s deregulatory vision.
- 23 See Brief for Committee for Economic Development as *Amicus Curiae*; Brief for American Independent Business Alliance as *Amicus Curiae*. But see Supp. Brief for Chamber of Commerce of the United States of America as *Amicus Curiae*.
- 24 See Brief for American Federation of Labor and Congress of Industrial Organizations as *Amicus Curiae* 3, 9.
- 25 See Brief for Independent Sector as *Amicus Curiae* 16–20.
- 26 See Brief for State of Montana et al. as *Amici Curiae*.
- 27 The FEC established this process following the Court’s June 2007 decision in that case, 551 U.S. 449, 127 S.Ct. 2652, 168 L.Ed.2d 329. In the brief interval between the establishment of this process and the 2008 election, corporations and unions used it to make \$108.5 million in electioneering communications. Supp. Brief for Appellee 22–23; FEC, Electioneering Communication Summary, online at <http://fec.gov/finance/disclosure/ECSummary.shtml> (all Internet materials as visited Jan. 18, 2010, and available in Clerk of Court’s case file).
- 28 Concededly, *Austin* and *McConnell* were constitutional decisions, and we have often said that “claims of *stare decisis* are at their weakest in that field, where our mistakes cannot be corrected by Congress.” *Vieth v. Jubelirer*, 541 U.S. 267, 305, 124 S.Ct. 1769, 158 L.Ed.2d 546 (2004) (plurality opinion). As a general matter, this principle is a sound one. But the principle only takes on real force when an earlier ruling has obstructed the normal democratic process; it is the fear of making “mistakes [that] cannot be corrected by Congress,” *ibid.*, that motivates us to review constitutional precedents with a more critical eye. *Austin* and *McConnell* did not obstruct state or congressional legislative power in any way. Although it is unclear how high a bar today’s decision will pose to future attempts to regulate corporate electioneering, it will clearly restrain much legislative action.
- 29 See FEC, Number of Federal PAC’s Increases, <http://fec.gov/press/press2008/20080812paccount.shtml>.
- 30 See Supp. Brief for Appellee 16 (citing FEC statistics placing this figure at \$840 million). The majority finds the PAC option inadequate in part because “[a] PAC is a separate association from the corporation.” *Ante*, at 897. The formal “separateness” of PACs from their host corporations—which administer and control the PACs but which cannot funnel general treasury funds into them or force members to support them—is, of course, the whole point of the PAC mechanism.
- 31 Roaming far afield from the case at hand, the majority worries that the Government will use § 203 to ban books, pamphlets, and blogs. *Ante*, at 896, 904, 912 – 913. Yet by its plain terms, § 203 does not apply to printed material. See 2 U.S.C. § 434(f)(3)(A)(i); see also 11 CFR § 100.29(c)(1) (“[E]lectioneering communication does not include communications



appearing in print media"). And in light of the ordinary understanding of the terms "broadcast, cable, [and] satellite," 2 U.S.C. § 434(f)(3)(A)(i), coupled with Congress' clear aim of targeting "a virtual torrent of televised election-related ads," *McConnell*, 540 U.S., at 207, 124 S.Ct. 619, we highly doubt that § 203 could be interpreted to apply to a Web site or book that happens to be transmitted at some stage over airwaves or cable lines, or that the FEC would ever try to do so. See 11 CFR § 100.26 (exempting most Internet communications from regulation as advertising); § 100.155 (exempting uncompensated Internet activity from regulation as an expenditure); Supp. Brief for Center for Independent Media et al. as *Amici Curiae* 14 (explaining that "the FEC has consistently construed [BCRA's] media exemption to apply to a variety of non-traditional media"). If it should, the Government acknowledges "there would be quite [a] good as-applied challenge." Tr. of Oral Arg. 65 (Sept. 9, 2009).

32 As the Government points out, with a media corporation there is also a lesser risk that investors will not understand, learn about, or support the advocacy messages that the corporation disseminates. Supp. Reply Brief for Appellee 10. Everyone knows and expects that media outlets may seek to influence elections in this way.

33 2 U.S.C. § 434(f)(3)(A)(i).

34 § 434(f)(3)(C).

35 § 434(f)(3)(A)(i)(II).

36 § 441b(b); *McConnell*, 540 U.S., at 211, 124 S.Ct. 619.

37 § 441b(b)(2)(C).

38 *WRTL*, 551 U.S. 449, 470, 127 S.Ct. 2652, 168 L.Ed.2d 329 (2007) (opinion of Roberts, C.J.).

39 It is likewise nonsense to suggest that the FEC's "business is to censor." *Ante*, at 896 (quoting *Freedman v. Maryland*, 380 U.S. 51, 57, 85 S.Ct. 734, 13 L.Ed.2d 649 (1965)). The FEC's business is to administer and enforce the campaign finance laws. The regulatory body at issue in *Freedman* was a state board of censors that had virtually unfettered discretion to bar distribution of motion picture films it deemed not to be "moral and proper." See *id.*, at 52–53, and n. 2, 85 S.Ct. 734. No movie could be shown in the State of Maryland that was not first approved and licensed by the board of censors. *Id.*, at 52, n. 1, 85 S.Ct. 734. It is an understatement to say that *Freedman* is not on point, and the majority's characterization of the FEC is deeply disconcerting.

40 Citizens United has administered this PAC for over a decade. See Defendant FEC's Memorandum in Opposition to Plaintiff's Second Motion for Preliminary Injunction in No. 07–2240 (ARR, RCL, RWR) (DC), p. 20. Citizens United also operates multiple "527" organizations that engage in partisan political activity. See Defendant FEC's Statement of Material Facts as to Which There Is No Genuine Dispute in No. 07–2240(DC), ¶¶ 22–24.

41 See, e.g., *Bethel School Dist. No. 403 v. Fraser*, 478 U.S. 675, 682, 106 S.Ct. 3159, 92 L.Ed.2d 549 (1986) ("[T]he constitutional rights of students in public school are not automatically coextensive with the rights of adults in other settings").

42 See, e.g., *Jones v. North Carolina Prisoners' Labor Union, Inc.*, 433 U.S. 119, 129, 97 S.Ct. 2532, 53 L.Ed.2d 629 (1977) ("In a prison context, an inmate does not retain those First Amendment rights that are inconsistent with his status as a prisoner or with the legitimate penological objectives of the corrections system" (internal quotation marks omitted)).

43 See, e.g., *Parker v. Levy*, 417 U.S. 733, 758, 94 S.Ct. 2547, 41 L.Ed.2d 439 (1974) ("While the members of the military are not excluded from the protection granted by the First Amendment, the different character of the military community and of the military mission requires a different application of those protections").

44 See, e.g., 2 U.S.C. § 441e(a)(1) (foreign nationals may not directly or indirectly make contributions or independent expenditures in connection with a U.S. election).

45 See, e.g., *Civil Service Comm'n v. Letter Carriers*, 413 U.S. 548, 550, 93 S.Ct. 2880, 37 L.Ed.2d 796 (1973) (upholding statute prohibiting Executive Branch employees from taking "an active part in political management or in political campaigns" (internal quotation marks omitted)); *Public Workers v. Mitchell*, 330 U.S. 75, 67 S.Ct. 556, 91 L.Ed. 754 (1947) (same); *United States v. Wurzbach*, 280 U.S. 396, 398, 50 S.Ct. 167, 74 L.Ed. 508 (1930) (upholding statute prohibiting federal employees from making contributions to Members of Congress for "any political purpose whatever" (internal quotation marks omitted)); *Ex parte Curtis*, 106 U.S. 371, 1 S.Ct. 381, 27 L.Ed. 232 (1882) (upholding statute prohibiting certain federal employees from giving money to other employees for political purposes).

46 The majority states that the cases just cited are "inapposite" because they "stand only for the proposition that there are certain governmental functions that cannot operate without some restrictions on particular kinds of speech." *Ante*, at 899. The majority's creative suggestion that these cases stand only for that one proposition is quite implausible. In any event, the proposition lies at the heart of this case, as Congress and half the state legislatures have concluded, over many decades, that their core functions of administering elections and passing legislation cannot operate effectively without some narrow restrictions on corporate electioneering paid for by general treasury funds.

- 47 Outside of the law, of course, it is a commonplace that the identity and incentives of the speaker might be relevant to an assessment of his speech. See Aristotle, *Poetics* § 11-2(vi), pp. 43–44 (M. Heath transl. 1996) (“In evaluating any utterance or action, one must take into account not just the moral qualities of what is actually done or said, but also the identity of the agent or speaker, the addressee, the occasion, the means, and the motive”). The insight that the identity of speakers is a proper subject of regulatory concern, it bears noting, motivates the disclaimer and disclosure provisions that the Court today upholds.
- 48 I dissented in *Forbes* because the broadcaster’s decision to exclude the respondent from its debate was done “on the basis of entirely subjective, ad hoc judgments,” 523 U.S., at 690, 118 S.Ct. 1633, that suggested anticompetitive viewpoint discrimination, *id.*, at 693–694, 118 S.Ct. 1633, and lacked a compelling justification. Needless to say, my concerns do not apply to the instant case.
- 49 The law at issue in *Burson* was far from unusual. “[A]ll 50 States,” the Court observed, “limit access to the areas in or around polling places.” 504 U.S., at 206, 112 S.Ct. 1846 (plurality opinion); see also Note, 91 Ky. L. J. 715, 729, n. 89, 747–769 (2003) (collecting statutes). I dissented in *Burson* because the evidence adduced to justify Tennessee’s law was “exceptionally thin,” 504 U.S., at 219, 112 S.Ct. 1846, and “the reason for [the] restriction [had] disappear[ed]” over time, *id.*, at 223, 112 S.Ct. 1846. “In short,” I concluded, “Tennessee ha[d] failed to point to any legitimate interest that would justify its selective regulation of campaign-related expression.” *Id.*, at 225, 112 S.Ct. 1846. These criticisms are inapplicable to the case before us.
- 50 They are likewise entitled to regulate media corporations differently from other corporations “to ensure that the law ‘does not hinder or prevent the institutional press from reporting on, and publishing editorials about, newsworthy events.’” *McConnell*, 540 U.S., at 208, 124 S.Ct. 619 (quoting *Austin v. Michigan Chamber of Commerce*, 494 U.S. 652, 668, 110 S.Ct. 1391, 108 L.Ed.2d 652 (1990)).
- 51 The Court all but confesses that a categorical approach to speaker identity is untenable when it acknowledges that Congress might be allowed to take measures aimed at “preventing foreign individuals or associations from influencing our Nation’s political process.” *Ante*, at 911. Such measures have been a part of U.S. campaign finance law for many years. The notion that Congress might lack the authority to distinguish foreigners from citizens in the regulation of electioneering would certainly have surprised the Framers, whose “obsession with foreign influence derived from a fear that foreign powers and individuals had no basic investment in the well-being of the country.” Teachout, *The Anti-Corruption Principle*, 94 Cornell L.Rev. 341, 393, n. 245 (2009) (hereinafter Teachout); see also U.S. Const., Art. I, § 9, cl. 8 (“[N]o Person holding any Office of Profit or Trust ... shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State”). Professor Teachout observes that a corporation might be analogized to a foreign power in this respect, “inasmuch as its legal loyalties necessarily exclude patriotism.” Teachout 393, n. 245.
- 52 See A. Bickel, *The Supreme Court and the Idea of Progress* 59–60 (1978); A. Meiklejohn, *Political Freedom: The Constitutional Powers of the People* 39–40 (1965); Tokaji, *First Amendment Equal Protection: On Discretion, Inequality, and Participation*, 101 Mich. L.Rev. 2409, 2508–2509 (2003). Of course, voting is not speech in a pure or formal sense, but then again neither is a campaign expenditure; both are nevertheless communicative acts aimed at influencing electoral outcomes. Cf. Strauss, *Corruption, Equality, and Campaign Finance Reform*, 94 Colum. L.Rev. 1369, 1383–1384 (1994) (hereinafter Strauss).
- 53 Scholars have found that only a handful of business corporations were issued charters during the colonial period, and only a few hundred during all of the 18th century. See E. Dodd, *American Business Corporations Until 1860*, p. 197 (1954); L. Friedman, *A History of American Law* 188–189 (2d ed. 1985); Baldwin, *American Business Corporations Before 1789*, 8 Am. Hist. Rev. 449, 450–459 (1903). Justice SCALIA quibbles with these figures; whereas we say that “a few hundred” charters were issued to business corporations during the 18th century, he says that the number is “approximately 335.” *Ante*, at 925 (concurring opinion). Justice SCALIA also raises the more serious point that it is improper to assess these figures by today’s standards, *ibid.*, though I believe he fails to substantiate his claim that “the corporation was a familiar figure in American economic life” by the century’s end, *ibid.* (internal quotation marks omitted). His formulation of that claim is also misleading, because the relevant reference point is not 1800 but the date of the First Amendment’s ratification, in 1791. And at that time, the number of business charters must have been significantly smaller than 335, because the pace of chartering only began to pick up steam in the last decade of the 18th century. More than half of the century’s total business charters were issued between 1796 and 1800. Friedman, *History of American Law*, at 189.
- 54 See Letter from Thomas Jefferson to Tom Logan (Nov. 12, 1816), in 12 *The Works of Thomas Jefferson* 42, 44 (P. Ford ed. 1905) (“I hope we shall ... crush in [its] birth the aristocracy of our monied corporations which dare already to challenge our government to a trial of strength and bid defiance to the laws of our country”).

- 55 In normal usage then, as now, the term “speech” referred to oral communications by individuals. See, e.g., 2 S. Johnson, Dictionary of the English Language 1853–1854 (4th ed. 1773) (reprinted 1978) (listing as primary definition of “speech”: “The power of articulate utterance; the power of expressing thoughts by vocal words”); 2 N. Webster, American Dictionary of the English Language (1828) (reprinted 1970) (listing as primary definition of “speech”: “The faculty of uttering articulate sounds or words, as in human beings; the faculty of expressing thoughts by words or articulate sounds. *Speech* was given to man by his Creator for the noblest purposes”). Indeed, it has been “claimed that the notion of institutional speech ... did not exist in post-revolutionary America.” Fagundes, *State Actors as First Amendment Speakers*, 100 Nw. U. L. Rev. 1637, 1654 (2006); see also Bezanson, *Institutional Speech*, 80 Iowa L. Rev. 735, 775 (1995) (“In the intellectual heritage of the eighteenth century, the idea that free speech was individual and personal was deeply rooted and clearly manifest in the writings of Locke, Milton, and others on whom the framers of the Constitution and the Bill of Rights drew”). Given that corporations were conceived of as artificial entities and do not have the technical capacity to “speak,” the burden of establishing that the Framers and ratifiers understood “the freedom of speech” to encompass corporate speech is, I believe, far heavier than the majority acknowledges.
- 56 Postratification practice bolsters the conclusion that the First Amendment, “as originally understood,” *ante*, at 906, did not give corporations political speech rights on a par with the rights of individuals. Well into the modern era of general incorporation statutes, “[t]he common law was generally interpreted as prohibiting corporate political participation,” *First Nat. Bank of Boston v. Bellotti*, 435 U.S. 765, 819, 98 S.Ct. 1407, 55 L.Ed.2d 707 (1978) (White, J., dissenting), and this Court did not recognize *any* First Amendment protections for corporations until the middle part of the 20th century, see *ante*, at 899 – 900 (listing cases).
- 57 In fact, the Free Press Clause might be turned against Justice SCALIA, for two reasons. First, we learn from it that the drafters of the First Amendment did draw distinctions—explicit distinctions—between types of “speakers,” or speech outlets or forms. Second, the Court’s strongest historical evidence all relates to the Framers’ views on the press, see *ante*, at 906 – 907; *ante*, at 926 – 928 (SCALIA, J., concurring), yet while the Court tries to sweep this evidence into the Free Speech Clause, the Free Press Clause provides a more natural textual home. The text and history highlighted by our colleagues suggests why one type of corporation, those that are part of the press, might be able to claim special First Amendment status, and therefore why some kinds of “identity”-based distinctions might be permissible after all. Once one accepts that much, the intellectual edifice of the majority opinion crumbles.
- 58 Cf. L. Levy, *Legacy of Suppression: Freedom of Speech and Press in Early American History* 4 (1960) (“The meaning of no other clause of the Bill of Rights at the time of its framing and ratification has been so obscure to us” as the Free Speech and Press Clause).
- 59 As the majority notes, there is some academic debate about the precise origins of these developments. *Ante*, at 912; see also n. 19, *supra*. There is *always* some academic debate about such developments; the motives of legislatures are never entirely clear or unitary. Yet the basic shape and trajectory of 20th-century campaign finance reform are clear, and one need not take a naïve or triumphalist view of this history to find it highly relevant. The Court’s skepticism does nothing to mitigate the absurdity of its claim that *Austin* and *McConnell* were outliers. Nor does it alter the fact that five Justices today destroy a longstanding American practice.
- 60 See *Pipefitters v. United States*, 407 U.S. 385, 409, 414–415, 92 S.Ct. 2247, 33 L.Ed.2d 11 (1972) (reading the statutory bar on corporate and union campaign spending not to apply to “the voluntary donations of employees,” when maintained in a separate account, because “[t]he dominant [legislative] concern in requiring that contributions be voluntary was, after all, to protect the dissenting stockholder or union member”); *Automobile Workers*, 352 U.S., at 592, 77 S.Ct. 529 (advising the District Court to consider on remand whether the broadcast in question was “paid for out of the general dues of the union membership or [whether] the funds [could] be fairly said to have been obtained on a voluntary basis”); *United States v. CIO*, 335 U.S. 106, 123, 68 S.Ct. 1349, 92 L.Ed. 1849 (1948) (observing that “funds voluntarily contributed [by union members or corporate stockholders] for election purposes” might not be covered by the expenditure bar). Both the *Pipefitters* and the *Automobile Workers* Courts approvingly referenced Congress’ goal of reducing “the effect of aggregated wealth on federal elections,” understood as wealth drawn from a corporate or union general treasury without the stockholders’ or members’ “free and knowing choice.” *Pipefitters*, 407 U.S., at 416, 92 S.Ct. 2247; see *Automobile Workers*, 352 U.S., at 582, 77 S.Ct. 529.
- The two dissenters in *Pipefitters* would not have read the statutory provision in question, a successor to § 304 of the Taft–Hartley Act, to allow such robust use of corporate and union funds to finance otherwise prohibited electioneering. “This opening of the door to extensive corporate and union influence on the elective and legislative processes,” Justice Powell wrote, “must be viewed with genuine concern. This seems to me to be a regressive step as contrasted with the numerous



legislative and judicial actions in recent years designed to assure that elections are indeed free and representative." 407 U.S., at 450, 92 S.Ct. 2247 (opinion of Powell, J., joined by Burger, C.J.).

- 61 Specifically, these corporations had to meet three conditions. First, they had to be formed "for the express purpose of promoting political ideas," so that their resources reflected political support rather than commercial success. *MCFL*, 479 U.S., at 264, 107 S.Ct. 616. Next, they had to have no shareholders, so that "persons connected with the organization will have no economic disincentive for disassociating with it if they disagree with its political activity." *Ibid*. Finally, they could not be "established by a business corporation or a labor union," nor "accept contributions from such entities," lest they "serv[e] as conduits for the type of direct spending that creates a threat to the political marketplace." *Ibid*.
- 62 According to THE CHIEF JUSTICE, we are "erroneou[s]" in claiming that *McConnell* and *Beaumont* "reaffirmed" *Austin*. *Ante*, at 919 – 920. In both cases, the Court explicitly relied on *Austin* and quoted from it at length. See 540 U.S., at 204–205, 124 S.Ct. 619, 539 U.S., at 153–155, 158, 160, 163, 123 S.Ct. 2200; see also *ante*, at 893 – 894 (opinion of the Court) ("The holding and validity of *Austin* were essential to the reasoning of the *McConnell* majority opinion"); Brief for Appellants National Rifle Association et al., O.T. 2003, No. 02–1675, p. 21 ("*Beaumont* reaffirmed ... the *Austin* rationale for restricting expenditures"). The *McConnell* Court did so in the teeth of vigorous protests by Justices in today's majority that *Austin* should be overruled. See *ante*, at 893 – 894 (citing relevant passages); see also *Beaumont*, 539 U.S., at 163–164, 123 S.Ct. 2200 (KENNEDY, J., concurring in judgment). Both Courts also heard criticisms of *Austin* from parties or *amici*. See Brief for Appellants Chamber of Commerce of the United States et al., O.T.2003, No. 02–1756, p. 35, n. 22; Reply Brief for Appellants/Cross-Appellees Senator Mitch McConnell et al., O.T. 2003, No. 02–1674, pp. 13–14; Brief for Pacific Legal Foundation as *Amicus Curiae* in *FEC v. Beaumont*, O.T. 2002, No. 02–403, *passim*. If this does not qualify as reaffirmation of a precedent, then I do not know what would.
- 63 Cf. *Nixon v. Shrink Missouri Government PAC*, 528 U.S. 377, 389, 120 S.Ct. 897, 145 L.Ed.2d 886 (2000) (recognizing "the broader threat from politicians too compliant with the wishes of large contributors"). Though discrete in scope, these experiments must impose some meaningful limits if they are to have a chance at functioning effectively and preserving the public's trust. "Even if it occurs only occasionally, the potential for such undue influence is manifest. And unlike straight cash-for-votes transactions, such corruption is neither easily detected nor practical to criminalize." *McConnell*, 540 U.S., at 153, 124 S.Ct. 619. There should be nothing controversial about the proposition that the influence being targeted is "undue." In a democracy, officeholders should not make public decisions with the aim of placating a financial benefactor, except to the extent that the benefactor is seen as representative of a larger constituency or its arguments are seen as especially persuasive.
- 64 The majority declares by fiat that the appearance of undue influence by high-spending corporations "will not cause the electorate to lose faith in our democracy." *Ante*, at 910. The electorate itself has consistently indicated otherwise, both in opinion polls, see *McConnell v. FEC*, 251 F.Supp.2d 176, 557–558, 623–624 (D.D.C.2003) (opinion of Kollar-Kotelly, J.), and in the laws its representatives have passed, and our colleagues have no basis for elevating their own optimism into a tenet of constitutional law.
- 65 Quite distinct from the interest in preventing improper influences on the electoral process, I have long believed that "a number of [other] purposes, both legitimate and substantial, may justify the imposition of reasonable limitations on the expenditures permitted during the course of any single campaign." *Davis v. FEC*, 554 U.S. 724, 751, 128 S.Ct. 2759, 2779, 171 L.Ed.2d 737 (2008) (opinion concurring in part and dissenting in part). In my judgment, such limitations may be justified to the extent they are tailored to "improving the quality of the exposition of ideas" that voters receive, *ibid.*, "free[ing] candidates and their staffs from the interminable burden of fundraising," *ibid.* (internal quotation marks omitted), and "protect[ing] equal access to the political arena," *Randall v. Sorrell*, 548 U.S. 230, 278, 126 S.Ct. 2479, 165 L.Ed.2d 482 (2006) (STEVENS, J., dissenting) (internal quotation marks omitted). I continue to adhere to these beliefs, but they have not been briefed by the parties or *amici* in this case, and their soundness is immaterial to its proper disposition.
- 66 In fact, the notion that the "electioneering communications" covered by § 203 can breed *quid pro quo* corruption or the appearance of such corruption has only become more plausible since we decided *McConnell*. Recall that THE CHIEF JUSTICE's controlling opinion in *WRTL* subsequently limited BCRA's definition of "electioneering communications" to those that are "susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate." 551 U.S., at 470, 127 S.Ct. 2652. The upshot was that after *WRTL*, a corporate or union expenditure could be regulated under § 203 only if everyone would understand it as an endorsement of or attack on a particular candidate for office. It does not take much imagination to perceive why this type of advocacy might be especially apt to look like or amount to a deal or a threat.



- 67 "We must give weight" and "due deference" to Congress' efforts to dispel corruption, the Court states at one point. *Ante*, at 911. It is unclear to me what these maxims mean, but as applied by the Court they clearly do not entail "deference" in any normal sense of that term.
- 68 Justice BREYER has suggested that we strike the balance as follows: "We should defer to [the legislature's] political judgment that unlimited spending threatens the integrity of the electoral process. But we should not defer in respect to whether its solution ... insulates legislators from effective electoral challenge." *Shrink Missouri*, 528 U.S., at 403–404, 120 S.Ct. 897 (concurring opinion).
- 69 THE CHIEF JUSTICE denies this, *ante*, at 921 – 923, citing scholarship that has interpreted *Austin* to endorse an equality rationale, along with an article by Justice Thurgood Marshall's former law clerk that states that Marshall, the author of *Austin*, accepted "equality of opportunity" and "equalizing access to the political process" as bases for campaign finance regulation, Garrett, *New Voices in Politics: Justice Marshall's Jurisprudence on Law and Politics*, 52 *How. L. J.* 655, 667–668 (2009) (internal quotation marks omitted). It is fair to say that *Austin* can bear an egalitarian reading, and I have no reason to doubt this characterization of Justice Marshall's beliefs. But the fact that *Austin* can be read a certain way hardly proves THE CHIEF JUSTICE's charge that there is nothing more to it. Many of our precedents can bear multiple readings, and many of our doctrines have some "equalizing" implications but do not rest on an equalizing theory: for example, our takings jurisprudence and numerous rules of criminal procedure. More importantly, the *Austin* Court expressly declined to rely on a speech-equalization rationale, see 494 U.S., at 660, 110 S.Ct. 1391, and we have never understood *Austin* to stand for such a rationale. Whatever his personal views, Justice Marshall simply did not write the opinion that THE CHIEF JUSTICE suggests he did; indeed, he "would have viewed it as irresponsible to write an opinion that boldly staked out a rationale based on equality that no one other than perhaps Justice White would have even considered joining," Garrett, 52 *How. L. J.*, at 674.
- 70 In state elections, even domestic corporations may be "foreign" controlled in the sense that they are incorporated in another jurisdiction and primarily owned and operated by out-of-state residents.
- 71 Regan, *Corporate Speech and Civic Virtue*, in *Debating Democracy's Discontent* 289, 302 (A. Allen & M. Regan eds. 1998) (hereinafter Regan).
- 72 Nothing in this analysis turns on whether the corporation is conceptualized as a grantee of a state concession, see, e.g., *Trustees of Dartmouth College v. Woodward*, 4 Wheat. 518, 636, 4 L.Ed. 629 (1819) (Marshall, C. J.), a nexus of explicit and implicit contracts, see, e.g., F. Easterbrook & D. Fischel, *The Economic Structure of Corporate Law* 12 (1991), a mediated hierarchy of stakeholders, see, e.g., Blair & Stout, *A Team Production Theory of Corporate Law*, 85 *Va. L. Rev.* 247 (1999) (hereinafter Blair & Stout), or any other recognized model. *Austin* referred to the structure and the advantages of corporations as "state-conferred" in several places, 494 U.S., at 660, 665, 667, 110 S.Ct. 1391, but its antidistortion argument relied only on the basic descriptive features of corporations, as sketched above. It is not necessary to agree on a precise theory of the corporation to agree that corporations differ from natural persons in fundamental ways, and that a legislature might therefore need to regulate them differently if it is human welfare that is the object of its concern. Cf. Hansmann & Kraakman 441, n. 5.
- 73 Not all corporations support BCRA § 203, of course, and not all corporations are large business entities or their tax-exempt adjuncts. Some nonprofit corporations are created for an ideological purpose. Some closely held corporations are strongly identified with a particular owner or founder. The fact that § 203, like the statute at issue in *Austin*, regulates some of these corporations' expenditures does not disturb the analysis above. See 494 U.S., at 661–665, 110 S.Ct. 1391. Small-business owners may speak in their own names, rather than the business', if they wish to evade § 203 altogether. Nonprofit corporations that want to make unrestricted electioneering expenditures may do so if they refuse donations from businesses and unions and permit members to disassociate without economic penalty. See *MCFL*, 479 U.S. 238, 264, 107 S.Ct. 616, 93 L.Ed.2d 539 (1986). Making it plain that their decision is not motivated by a concern about BCRA's coverage of nonprofits that have ideological missions but lack *MCFL* status, our colleagues refuse to apply the Snowe–Jeffords Amendment or the lower courts' *de minimis* exception to *MCFL*. See *ante*, at 891 – 892.
- 74 Of course, no presiding person in a courtroom, legislature, classroom, polling place, or family dinner would take this hyperbole literally.
- 75 Under the majority's view, the legislature is thus damned if it does and damned if it doesn't. If the legislature gives media corporations an exemption from electioneering regulations that apply to other corporations, it violates the newly minted First Amendment rule against identity-based distinctions. If the legislature does not give media corporations an exemption, it violates the First Amendment rights of the press. The only way out of this invented bind: no regulations whatsoever.
- 76 I note that, among the many other regulatory possibilities it has left open, ranging from new versions of § 203 supported by additional evidence of *quid pro quo* corruption or its appearance to any number of tax incentive or public financing

schemes, today's decision does not require that a legislature rely solely on these mechanisms to protect shareholders. Legislatures remain free in their incorporation and tax laws to condition the types of activity in which corporations may engage, including electioneering activity, on specific disclosure requirements or on prior express approval by shareholders or members.

- 1 BCRA imposes similar disclosure requirements. See, e.g., 2 U.S.C. § 434(f)(2)(F) ("Every person who makes a disbursement for the direct costs of producing and airing electioneering communications in an aggregate amount in excess of \$10,000 during any calendar year" must disclose "the names and addresses of all contributors who contributed an aggregate amount of \$1,000 or more to the person making the disbursement").
- 2 But cf. *Hill v. Colorado*, 530 U.S. 703, 707–710, 120 S.Ct. 2480, 147 L.Ed.2d 597 (2000) (approving a statute restricting speech "within 100 feet" of abortion clinics because it protected women seeking an abortion from " 'sidewalk counseling,' " which "consists of efforts 'to educate, counsel, persuade, or inform passersby about abortion and abortion alternatives by means of verbal or written speech,' " and which "sometimes" involved "strong and abusive language in face-to-face encounters").

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S.  
Government Works.

Arizona Revised Statutes Annotated  
Constitution of the State of Arizona (Refs & Annos)  
Article VIII. Removal from Office  
Part 1. Recall of Public Officers (Refs & Annos)

A.R.S. Const. Art. 8 Pt. 1 § 1

## § 1. Officers subject to recall; petitioners

### Currentness

Section 1. Every public officer in the state of Arizona, holding an elective office, either by election or appointment, is subject to recall from such office by the qualified electors of the electoral district from which candidates are elected to such office. Such electoral district may include the whole state. Such number of said electors as shall equal twenty-five per centum of the number of votes cast at the last preceding general election for all of the candidates for the office held by such officer, may by petition, which shall be known as a recall petition, demand his recall.

### Credits

Amendment approved election Nov. 5, 1912, eff. Dec. 5, 1912.

### Notes of Decisions (19)

A. R. S. Const Art. 8 Pt. 1 § 1, AZ CONST Art. 8 Pt. 1 § 1

Current through legislation effective May 10, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

Arizona Revised Statutes Annotated  
Constitution of the State of Arizona (Refs & Annos)  
Article VIII. Removal from Office  
Part 1. Recall of Public Officers (Refs & Annos)

A.R.S. Const. Art. 8 Pt. 1 § 2

## § 2. Recall petitions; contents; filing; signatures; oath

### Currentness

Section 2. Every recall petition must contain a general statement, in not more than two hundred words, of the grounds of such demand, and must be filed in the office in which petitions for nominations to the office held by the incumbent are required to be filed. The signatures to such recall petition need not all be on one sheet of paper, but each signer must add to his signature the date of his signing said petition, and his place of residence, giving his street and number, if any, should he reside in a town or city. One of the signers of each sheet of such petition, or the person circulating such sheet, must make and subscribe an oath on said sheet, that the signatures thereon are genuine.

Notes of Decisions (35)

A. R. S. Const Art. 8 Pt. 1 § 2, AZ CONST Art. 8 Pt. 1 § 2

Current through legislation effective May 10, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

Decision No. 78040

RECEIVED

APP-081



Arizona Revised Statutes Annotated  
Constitution of the State of Arizona (Refs & Annos)  
Article VIII. Removal from Office  
Part 1. Recall of Public Officers (Refs & Annos)

A.R.S. Const. Art. 8 Pt. 1 § 3

### § 3. Resignation of officer; special election

#### Currentness

Section 3. If such officer shall offer his resignation it shall be accepted, and the vacancy shall be filled as may be provided by law. If he shall not resign within five days after a recall petition is filed as provided by law, a special election shall be ordered to be held as provided by law, to determine whether such officer shall be recalled. On the ballots at such election shall be printed the reasons as set forth in the petition for demanding his recall, and, in not more than two hundred words, the officer's justification of his course in office. He shall continue to perform the duties of his office until the result of such election shall have been officially declared.

#### Credits

Amendment approved election Nov. 5, 1974, eff. Dec. 5, 1974.

#### Notes of Decisions (3)

A. R. S. Const Art. 8 Pt. 1 § 3, AZ CONST Art. 8 Pt. 1 § 3

Current through legislation effective May 10, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

Decision No. 78040

Arizona Revised Statutes Annotated  
Constitution of the State of Arizona (Refs & Annos)  
Article VIII. Removal from Office  
Part 1. Recall of Public Officers (Refs & Annos)

A.R.S. Const. Art. 8 Pt. 1 § 4

## § 4. Special election; candidates; results; qualification of successor

### Currentness

Section 4. Unless the incumbent otherwise requests, in writing, the incumbent's name shall be placed as a candidate on the official ballot without nomination. Other candidates for the office may be nominated to be voted for at said election. The candidate who receives the highest number of votes shall be declared elected for the remainder of the term. Unless the incumbent receives the highest number of votes, the incumbent shall be deemed to be removed from office, upon qualification of the successor. In the event that the successor shall not qualify within five days after the result of said election shall have been declared, the said office shall be vacant, and may be filled as provided by law.

### Credits

Amendment approved election Nov. 8, 1988, eff. Dec. 5, 1988; approved election Nov. 3, 1992, eff. Nov. 23, 1992.

### Notes of Decisions (4)

A. R. S. Const Art. 8 Pt. 1 § 4, AZ CONST Art. 8 Pt. 1 § 4

Current through legislation effective May 10, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

Decision No. 78040

KeyCite Yellow Flag - Negative Treatment

Proposed Legislation

Arizona Revised Statutes Annotated  
Constitution of the State of Arizona (Refs & Annos)  
Article VIII. Removal from Office  
Part 1. Recall of Public Officers (Refs & Annos)

A.R.S. Const. Art. 8 Pt. 1 § 5

## § 5. Recall petitions; restrictions and conditions

Currentness

Section 5. No recall petition shall be circulated against any officer until he shall have held his office for a period of six months, except that it may be filed against a member of the legislature at any time after five days from the beginning of the first session after his election. After one recall petition and election, no further recall petition shall be filed against the same officer during the term for which he was elected, unless petitioners signing such petition shall first pay into the public treasury which has paid such election expenses, all expenses of the preceding election.

Notes of Decisions (4)

A. R. S. Const Art. 8 Pt. 1 § 5, AZ CONST Art. 8 Pt. 1 § 5

Current through legislation effective May 10, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

Decision No. 78040

Arizona Revised Statutes Annotated  
Constitution of the State of Arizona (Refs & Annos)  
Article VIII. Removal from Office  
Part 1. Recall of Public Officers (Refs & Annos)

A.R.S. Const. Art. 8 Pt. 1 § 6

## § 6. Application of general election laws; supplementary legislation

### Currentness

Section 6. The general election laws shall apply to recall elections in so far as applicable. Laws necessary to facilitate the operation of the provisions of this article shall be enacted, including provision for payment by the public treasury of the reasonable special election campaign expenses of such officer.

### Notes of Decisions (2)

A. R. S. Const Art. 8 Pt. 1 § 6, AZ CONST Art. 8 Pt. 1 § 6

Current through legislation effective May 10, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

Decision No. 78040



Arizona Revised Statutes Annotated  
Constitution of the State of Arizona (Refs & Annos)  
Article VIII. Removal from Office  
Part 2. Impeachment (Refs & Annos)

A.R.S. Const. Art. 8 Pt. 2 § 1

§ 1. Power of impeachment in house of representatives; trial by senate

Currentness

Section 1. The house of representatives shall have the sole power of impeachment. The concurrence of a majority of all the members shall be necessary to an impeachment. All impeachments shall be tried by the senate, and, when sitting for that purpose, the senators shall be upon oath or affirmation to do justice according to law and evidence, and shall be presided over by the chief justice of the supreme court. Should the chief justice be on trial, or otherwise disqualified, the senate shall elect a judge of the supreme court to preside.

Notes of Decisions (8)

A. R. S. Const Art. 8 Pt. 2 § 1, AZ CONST Art. 8 Pt. 2 § 1

Current through legislation effective May 10, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

Decision No. 78040

Arizona Revised Statutes Annotated  
Constitution of the State of Arizona (Refs & Annos)  
Article VIII. Removal from Office  
Part 2. Impeachment (Refs & Annos)

A.R.S. Const. Art. 8 Pt. 2 § 2

§ 2. Conviction; grounds for impeachment; judgment; liability to trial

Currentness

Section 2. No person shall be convicted without a concurrence of two-thirds of the senators elected. The governor and other state and judicial officers, except justices of courts not of record, shall be liable to impeachment for high crimes, misdemeanors, or malfeasance in office, but judgment in such cases shall extend only to removal from office and disqualification to hold any office of honor, trust, or profit in the state. The party, whether convicted or acquitted, shall, nevertheless, be liable to trial and punishment according to law.

Notes of Decisions (10)

A. R. S. Const Art. 8 Pt. 2 § 2, AZ CONST Art. 8 Pt. 2 § 2

Current through legislation effective May 10, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

Decision No. 78040



KeyCite Red Flag - Severe Negative Treatment

Enacted Legislation Amended by 2021 Ariz. Legis. Serv. Ch. 269 (H.B. 2787) (WEST).

## Arizona Revised Statutes Annotated

## Title 1. General Provisions

## Chapter 2. Law and Statutes

## Article 2. General Rules of Statutory Construction

## A.R.S. § 1-215

## § 1-215. Definitions

Effective: August 6, 2016

Currentness

In the statutes and laws of this state, unless the context otherwise requires:

1. "Action" includes any matter or proceeding in a court, civil or criminal.
2. "Adopted rule" means a final rule as defined in § 41-1001.
3. "Adult" means a person who has attained eighteen years of age.
4. "Alternative fuel" means:
  - (a) Electricity.
  - (b) Solar energy.
  - (c) Liquefied petroleum gas, natural gas, hydrogen or a blend of hydrogen with liquefied petroleum or natural gas that complies with any of the following:
    - (i) Is used in an engine that is certified to meet at a minimum the United States environmental protection agency low emission vehicle standard pursuant to 40 Code of Federal Regulations section 88.104-94 or 88.105-94.
    - (ii) Is used in an engine that is certified by the engine modifier to meet the addendum to memorandum 1-A of the United States environmental protection agency as printed in the federal register, volume 62, number 207, October 27, 1997, pages 55635 through 55637.

Decision No. 78040

(iii) Is used in an engine that is the subject of a waiver for that specific engine application from the United States environmental protection agency's memorandum 1-A addendum requirements and that waiver is documented to the reasonable satisfaction of the director of the department of environmental quality.

(d) Only for vehicles that use alcohol fuels before August 21, 1998, alcohol fuels that contain not less than eighty-five per cent alcohol by volume.

(e) A combination of at least seventy per cent alternative fuel and no more than thirty per cent petroleum based fuel that operates in an engine that meets the United States environmental protection agency low emission vehicle standard pursuant to 40 Code of Federal Regulations section 88.104-94 or 88.105-94 and that is certified by the engine manufacturer to consume at least seventy per cent alternative fuel during normal vehicle operations.

5. "Bribe" means anything of value or advantage, present or prospective, asked, offered, given, accepted or promised with a corrupt intent to influence, unlawfully, the person to whom it is given in that person's action, vote or opinion, in any public or official capacity.

6. "Child" or "children" as used in reference to age of persons means persons under eighteen years of age.

7. "Clean burning fuel" means:

(a) An emulsion of water-phased hydrocarbon fuel that contains not less than twenty per cent water by volume and that complies with any of the following:

(i) Is used in an engine that is certified to meet at a minimum the United States environmental protection agency low emission vehicle standard pursuant to 40 Code of Federal Regulations section 88.104-94 or 88.105-94.

(ii) Is used in an engine that is certified by the engine modifier to meet the addendum to memorandum 1-A of the United States environmental protection agency as printed in the federal register, volume 62, number 207, October 27, 1997, pages 55635 through 55637.

(iii) Is used in an engine that is the subject of a waiver for that specific engine application from the United States environmental protection agency's memorandum 1-A addendum requirements and that waiver is documented to the reasonable satisfaction of the director of the department of environmental quality.

(b) A diesel fuel substitute that is produced from nonpetroleum renewable resources if the qualifying volume of the nonpetroleum renewable resources meets the standards for California diesel fuel as adopted by the California air resources board pursuant to 13 California Code of Regulations sections 2281 and 2282 in effect on January 1, 2000, the diesel fuel substitute meets the registration requirement for fuels and additives established by the United States environmental protection agency pursuant to section 211 of the clean air act as defined in § 49-401.01 and the use of the diesel fuel substitute complies with the requirements listed in 10 Code of Federal Regulations part 490, as printed in the federal register, volume 64, number 96, May 19, 1999.

(c) A diesel fuel that complies with all of the following:

(i) Contains a maximum of fifteen parts per million by weight of sulfur.

(ii) Meets ASTM D975.

(iii) Meets the registration requirements for fuels and additives established by the United States environmental protection agency pursuant to section 211 of the clean air act as defined in § 49-401.01.

(iv) Is used in an engine that is equipped or has been retrofitted with a device that has been certified by the California air resources board diesel emission control strategy verification procedure, the United States environmental protection agency voluntary diesel retrofit program or the United States environmental protection agency verification protocol for retrofit catalyst, particulate filter and engine modification control technologies for highway and nonroad use diesel engines.

(d) A blend of unleaded gasoline that contains at minimum eighty-five per cent ethanol by volume or eighty-five per cent methanol by volume.

(e) Neat methanol.

(f) Neat ethanol.

8. "Corruptly" means a wrongful design to acquire or cause some pecuniary or other advantage to the person guilty of the act or omission referred to, or to some other person.

9. "Daytime" means the period between sunrise and sunset.

10. "Depose" includes every manner of written statement under oath or affirmation.

11. "Federal poverty guidelines" means the poverty guidelines as updated annually in the federal register by the United States department of health and human services.

12. "Grantee" includes every person to whom an estate or interest in real property passes, in or by a deed.

13. "Grantor" includes every person from or by whom an estate or interest in real property passes, in or by a deed.

14. "Includes" or "including" means not limited to and is not a term of exclusion.

15. "Inhabitant" means a resident of a city, town, village, district, county or precinct.

Decision No. 78040



16. "Issue" as used in connection with descent of estates includes all lawful, lineal descendants of the ancestor.

17. "Knowingly":

(a) Means only a knowledge that the facts exist that bring the act or omission within the provisions of the statute using such word.

(b) Does not require any knowledge of the unlawfulness of the act or omission.

18. "Magistrate" means an officer having power to issue a warrant for the arrest of a person charged with a public offense and includes the chief justice and justices of the supreme court, judges of the superior court, judges of the court of appeals, justices of the peace and judges of a municipal court.

19. "Majority" or "age of majority" as used in reference to age of persons means eighteen years of age or more.

20. "Malice" and "maliciously" mean a wish to vex, annoy or injure another person, or an intent to do a wrongful act, established either by proof or presumption of law.

21. "Minor" means a person under the age of eighteen years.

22. "Minor children" means persons under the age of eighteen years.

23. "Month" means a calendar month unless otherwise expressed.

24. "Neglect", "negligence", "negligent" and "negligently" import a want of such attention to the nature or probable consequence of the act or omission as a prudent man ordinarily bestows in acting in his own concerns.

25. "Nighttime" means the period between sunset and sunrise.

26. "Oath" includes an affirmation or declaration.

27. "Peace officers" means sheriffs of counties, constables, marshals, policemen of cities and towns, commissioned personnel of the department of public safety, personnel who are employed by the state department of corrections and the department of juvenile corrections and who have received a certificate from the Arizona peace officer standards and training board, peace officers who are appointed by a multicounty water conservation district and who have received a certificate from the Arizona peace officer standards and training board, police officers who are appointed by community college district governing boards and who have received a certificate from the Arizona peace officer standards and training board, police officers who are appointed by the Arizona board of regents and who have received a certificate from the Arizona peace officer standards and training board, police officers who are appointed by the governing body of a public airport pursuant to § 28-8426 and who have

Decision No. 78040

received a certificate from the Arizona peace officer standards and training board, peace officers who are appointed by a private postsecondary institution pursuant to § 15-1897 and who have received a certificate from the Arizona peace officer standards and training board and special agents from the office of the attorney general, or of a county attorney, and who have received a certificate from the Arizona peace officer standards and training board.

28. "Person" includes a corporation, company, partnership, firm, association or society, as well as a natural person. When the word "person" is used to designate the party whose property may be the subject of a criminal or public offense, the term includes the United States, this state, or any territory, state or country, or any political subdivision of this state that may lawfully own any property, or a public or private corporation, or partnership or association. When the word "person" is used to designate the violator or offender of any law, it includes corporation, partnership or any association of persons.

29. "Personal property" includes money, goods, chattels, things in action and evidences of debt.

30. "Population" means the population according to the most recent United States decennial census.

31. "Process" means a citation, writ or summons issued in the course of judicial proceedings.

32. "Property" includes both real and personal property.

33. "Real property" is coextensive with lands, tenements and hereditaments.

34. "Registered mail" includes certified mail.

35. "Seal" as used in reference to a paper issuing from a court or public office to which the seal of such court or office is required to be affixed means an impression of the seal on that paper, an impression of the seal affixed to that paper by a wafer or wax, a stamped seal, a printed seal, a screened seal or a computer generated seal.

36. "Signature" or "subscription" includes a mark, if a person cannot write, with the person's name written near it and witnessed by a person who writes the person's own name as witness.

37. "State", as applied to the different parts of the United States, includes the District of Columbia, this state and the territories.

38. "Testify" includes every manner of oral statement under oath or affirmation.

39. "United States" includes the District of Columbia and the territories.

40. "Vessel", as used in reference to shipping, includes ships of all kinds, steamboats, steamships, barges, canal boats and every structure adapted to navigation from place to place for the transportation of persons or property.

41. “Wilfully” means, with respect to conduct or to a circumstance described by a statute defining an offense, that a person is aware or believes that the person’s conduct is of that nature or that the circumstance exists.

42. “Will” includes codicils.

43. “Workers’ compensation” means workmen’s compensation as used in article XVIII, section 8, Constitution of Arizona.

44. “Writ” means an order or precept in writing issued in the name of the state or by a court or judicial officer.

45. “Writing” includes printing.

#### **Credits**

Amended by Laws 1956, Ch. 30, § 1, eff. July 14, 1956; Laws 1959, Ch. 65, § 1; Laws 1972, Ch. 146, § 1; Laws 1978, Ch. 201, § 1, eff. Oct. 1, 1978; Laws 1981, Ch. 28, § 1; Laws 1984, Ch. 188, § 1; Laws 1985, Ch. 280, § 1; Laws 1995, Ch. 287, § 1; Laws 1996, 7th S.S., Ch. 6, § 1; Laws 1998, Ch. 57, § 1; Laws 1998, Ch. 221, § 1; Laws 1999, Ch. 168, § 1, eff. May 5, 1999; Laws 1999, Ch. 219, § 1; Laws 1999, Ch. 295, § 1; Laws 2000, Ch. 142, § 1; Laws 2000, Ch. 148, § 1; Laws 2000, Ch. 405, § 1, eff. April 28, 2000; Laws 2001, Ch. 344, § 1, eff. Oct. 1, 2001; Laws 2002, Ch. 76, § 1; Laws 2002, Ch. 211, § 1; Laws 2004, Ch. 82, § 1; Laws 2004, Ch. 95, § 1; Laws 2006, Ch. 245, § 1; Laws 2012, Ch. 355, § 1; Laws 2013, Ch. 84, § 1; Laws 2015, Ch. 276, § 1; Laws 2016, Ch. 310, § 1.

#### **Notes of Decisions (60)**

A. R. S. § 1-215, AZ ST § 1-215

Current through legislation effective May 10, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

Arizona Revised Statutes Annotated  
Title 12. Courts and Civil Proceedings  
Chapter 11. Extraordinary Legal Remedies  
Article 3. Quo Warranto (Refs & Annos)

A.R.S. § 12-2041

§ 12-2041. Action by attorney general; venue

Currentness

**A.** An action may be brought in the supreme court by the attorney general in the name of the state upon his relation, upon his own information or upon the verified complaint of any person, in cases where the supreme court has jurisdiction, or otherwise in the superior court of the county which has jurisdiction, against any person who usurps, intrudes into or unlawfully holds or exercises any public office or any franchise within this state.

**B.** The attorney general shall bring the action when he has reason to believe that any such office or franchise is being usurped, intruded into or unlawfully held or exercised.

Notes of Decisions (43)

A. R. S. § 12-2041, AZ ST § 12-2041

Current through legislation effective May 10, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

Decision No. 78040

Arizona Revised Statutes Annotated  
Title 12. Courts and Civil Proceedings  
Chapter 11. Extraordinary Legal Remedies  
Article 3. Quo Warranto (Refs & Annos)

A.R.S. § 12-2042

§ 12-2042. Action by county attorney

Currentness

An action may be brought in the superior court by the county attorney in the name of the state upon his own information or upon the verified complaint of any person, against any person who usurps, intrudes into or who unlawfully holds or exercises any public office or any franchise within his county. The county attorney shall bring the action when he has reason to believe that any such office or franchise is being usurped, intruded into or unlawfully held or exercised.

Notes of Decisions (6)

A. R. S. § 12-2042, AZ ST § 12-2042

Current through legislation effective May 10, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

Decision No. 78040



Arizona Revised Statutes Annotated  
Title 12. Courts and Civil Proceedings  
Chapter 11. Extraordinary Legal Remedies  
Article 3. Quo Warranto (Refs & Annos)

A.R.S. § 12-2043

§ 12-2043. Failure of attorney general or county  
attorney to bring action for claimant of office

Currentness

**A.** If the attorney general or the county attorney refuses to bring an action as provided for in §§ 12-2041 and 12-2042, upon information or at the request of any person claiming such office or franchise, the person may apply to the court for leave to bring the action in his own name and may so bring it if leave therefor is granted.

**B.** Notice of the application shall be given to the attorney general or the county attorney as the case may be.

Notes of Decisions (9)

A. R. S. § 12-2043, AZ ST § 12-2043

Current through legislation effective May 10, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

Decision No. 78040

Arizona Revised Statutes Annotated  
Title 12. Courts and Civil Proceedings  
Chapter 11. Extraordinary Legal Remedies  
Article 3. Quo Warranto (Refs & Annos)

A.R.S. § 12-2044

§ 12-2044. Adjudication of office; damages; several claimants

Currentness

**A.** When the action involves the right to an office, the complaint shall show the one who is entitled to the office, and the issues made thereon shall be tried. The judgment given shall adjudge who is entitled to the office. If judgment is given awarding the right to the office to the person alleged to be entitled thereto, he may recover the damages which he has sustained by reason of the usurpation of the office by defendant.

**B.** When several persons claim the same office or franchise, one action may be brought against all such persons to try their rights to the office or franchise.

Notes of Decisions (10)

A. R. S. § 12-2044, AZ ST § 12-2044

Current through legislation effective May 10, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

Decision No. 78040

Arizona Revised Statutes Annotated  
Title 12. Courts and Civil Proceedings  
Chapter 11. Extraordinary Legal Remedies  
Article 3. Quo Warranto (Refs & Annos)

A.R.S. § 12-2045

§ 12-2045. Judgment of usurpation; classification

Currentness

If a defendant is adjudged guilty of usurping or intruding into or unlawfully holding an office, franchise or privilege, such defendant is guilty of a petty offense and shall be excluded from the office, franchise or privilege.

**Credits**

Amended by Laws 1978, Ch. 201, § 84, eff. Oct. 1, 1978.

A. R. S. § 12-2045, AZ ST § 12-2045

Current through legislation effective May 10, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

Decision No. 78040



KeyCite Red Flag - Severe Negative Treatment

Unconstitutional or PreemptedHeld Unconstitutional by State v. Arevalo, Ariz., Sep. 01, 2020

Arizona Revised Statutes Annotated

Title 13. Criminal Code (Refs &amp; Annos)

Chapter 12. Assault and Related Offenses (Refs &amp; Annos)

A.R.S. § 13-1202

## § 13-1202. Threatening or intimidating; classification

Effective: September 19, 2007

Currentness

**A.** A person commits threatening or intimidating if the person threatens or intimidates by word or conduct:

1. To cause physical injury to another person or serious damage to the property of another; or
2. To cause, or in reckless disregard to causing, serious public inconvenience including, but not limited to, evacuation of a building, place of assembly or transportation facility; or
3. To cause physical injury to another person or damage to the property of another in order to promote, further or assist in the interests of or to cause, induce or solicit another person to participate in a criminal street gang, a criminal syndicate or a racketeering enterprise.

**B.** Threatening or intimidating pursuant to subsection A, paragraph 1 or 2 is a class 1 misdemeanor, except that it is a class 6 felony if:

1. The offense is committed in retaliation for a victim's either reporting criminal activity or being involved in an organization, other than a law enforcement agency, that is established for the purpose of reporting or preventing criminal activity.
2. The person is a criminal street gang member.

**C.** Threatening or intimidating pursuant to subsection A, paragraph 3 is a class 3 felony.

**Credits**

Added by Laws 1977, Ch. 142, § 61, eff. Oct. 1, 1978. Amended by Laws 1978, Ch. 201, § 128, eff. Oct. 1, 1978; Laws 1990, Ch. 366, § 1; Laws 1994, Ch. 200, § 11, eff. April 19, 1994; Laws 2003, Ch. 225, § 2; Laws 2007, Ch. 287, § 3.

**Editors' Notes**

**VALIDITY**

<Subsection B, par. 2 held unconstitutional in the case of *State v. Arevalo*, 470 P.3d 644, (Ariz. 2020). >

**Notes of Decisions (27)**

A. R. S. § 13-1202, AZ ST § 13-1202

Current through legislation effective May 10, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.



Arizona Revised Statutes Annotated  
Title 16. Elections and Electors (Refs & Annos)  
Chapter 1.1. General Provisions (Refs & Annos)  
Article 1. Applicability

A.R.S. § 16-192

§ 16-192. Use of state, special taxing district resources to  
influence elections; prohibition; civil penalties; definitions

Effective: July 3, 2015  
Currentness

**A.** Notwithstanding any other law, this state and special taxing districts and any public agency, department, board, commission, committee, council or authority shall not spend or use public resources to influence an election, including the use or expenditure of monies, accounts, credit, materials, equipment, buildings, facilities, vehicles, postage, telecommunications, computer hardware and software, web pages and personnel and any other thing of value of the public entity.

**B.** The prohibition on the use of public resources to influence the outcome of bond, budget override and other tax-related elections includes the use of special taxing district-focused promotional expenditures that occur after an election is called and through election day. This prohibition does not include routine special taxing district communications.

**C.** This section does not prohibit:

1. The use of public resources, including facilities and equipment, for government-sponsored forums or debates if the government sponsor remains impartial and the events are purely informational and provide an equal opportunity to all viewpoints. The rental and use of a public facility by a private person or entity that may lawfully attempt to influence the outcome of an election is permitted if it does not occur at the same time and place as a government-sponsored forum or debate.

2. The presentation of factual information in a neutral manner for the purposes of educating and informing voters as otherwise provided by law, including information on a bond, budget, override, candidate or other type of election and including publications and activities otherwise prescribed by chapter 6, article 2 of this title<sup>1</sup> for the citizens clean elections commission.

**D.** The attorney general, the county attorney for the county in which an alleged violation of this section occurs or any resident of the jurisdiction that is alleged to have committed a violation of this section may file an action in the superior court to enforce this section.

**E.** Any person or public entity that knowingly violates this section or that knowingly aids another person or public entity in violating this section is liable for a civil penalty of not more than five thousand dollars for each violation. The court also may order the person or public entity in violation to pay an additional penalty in an amount that equals the value of the public resources unlawfully used. The civil penalties shall be paid as follows:

Decision No. 78040

1. For civil penalties ordered in an action filed by the attorney general, to the office of the attorney general to defray the costs of enforcement.

2. For civil penalties ordered in an action filed by the county attorney, to the office of the county treasurer for deposit into the general fund of the county.

3. For civil penalties ordered in an action filed by a resident of the jurisdiction in violation, to the resident.

**F.** This section does not deny the civil and political liberties of any person as guaranteed by the United States and Arizona Constitutions.

**G.** With respect to special taxing districts, this section applies only to those special taxing districts that are organized pursuant to title 48, chapters 5, 6, 8, 10, 13, 14, 15 and 16.

**H.** For the purposes of this section:

1. "Government-sponsored forum or debate" means any event, or part of an event or meeting, in which the government is an official sponsor, which is open to the public or to invited members of the public, and whose purpose is to inform the public about an issue or proposition that is before the voters.

2. "Influence an election" means supporting or opposing a candidate for nomination or election to public office or the recall of a public officer or supporting or opposing a ballot measure, question or proposition, including any bond, budget or override election and supporting or opposing the circulation of a petition for the recall of a public officer or a petition for a ballot measure, question or proposition in any manner that is not impartial or neutral.

3. "Routine special taxing district communications" means messages or advertisements that are germane to the functions of the special district and that maintain the frequency, scope and distribution consistent with past practices or are necessary for public safety.

#### Credits

Added by Laws 2013, Ch. 88, § 7. Amended by Laws 2015, Ch. 296, § 5.

#### Notes of Decisions (2)

#### Footnotes

1 Section 16-940 et seq.

A. R. S. § 16-192, AZ ST § 16-192

Current through legislation effective May 10, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

KeyCite Yellow Flag - Negative Treatment

Unconstitutional or Preempted Prior Version Held Unconstitutional by *Galassini v. Town of Fountain Hills*, D Ariz., Sep 30, 2013

KeyCite Yellow Flag - Negative Treatment Proposed Legislation

Arizona Revised Statutes Annotated

Title 16. Elections and Electors (Refs & Annos)

Chapter 6. Campaign Contributions and Expenses (Refs & Annos)

Article 1. General Provisions (Refs & Annos)

A.R.S. § 16-901

§ 16-901. Definitions

Effective: August 3, 2018

Currentness

In this chapter, unless the context otherwise requires:

1. "Advertisement" means information or materials, other than nonpaid social media messages, that are mailed, e-mailed, posted, distributed, published, displayed, delivered, broadcasted or placed in a communication medium and that are for the purpose of influencing an election.
2. "Affiliate" means any organization that controls, is controlled by or is under common control with a corporation, limited liability company or labor organization.
3. "Agent" means any person who has actual authority, either express or implied, to represent or make decisions on behalf of another person.
4. "Ballot measure expenditure" means an expenditure made by a person that expressly advocates the support or opposition of a clearly identified ballot measure.
5. "Best effort" means that a committee treasurer or treasurer's agent makes at least one written effort, including an attempt by e-mail, text message, private message through social media or other similar communication, or at least one oral effort that is documented in writing to identify the contributor of an incomplete contribution.
6. "Calendar quarter" means a period of three consecutive calendar months ending on March 31, June 30, September 30 or December 31.
7. "Candidate" means an individual who receives contributions or makes expenditures or who gives consent to another person to receive contributions or make expenditures on behalf of that individual in connection with the candidate's nomination, election or retention for any public office.

8. "Candidate committee" includes the candidate.

9. "Clearly identified candidate" means that the name or a description, image, photograph or drawing of the candidate appears or the identity of the candidate is otherwise apparent by unambiguous reference.

10. "Committee" means a candidate committee, a political action committee or a political party.

11. "Contribution" means any money, advance, deposit or other thing of value that is made to a person for the purpose of influencing an election. Contribution includes:

(a) A contribution that is made to retire campaign debt from a previous election cycle.

(b) Money or the fair market value of anything that is directly or indirectly provided to an elected official for the specific purpose of defraying the expense of communications with constituents.

(c) The full purchase price of any item from a committee.

(d) A loan that is made to a committee for the purpose of influencing an election, to the extent the loan remains outstanding.

12. "Control" means to possess, directly or indirectly, the power to direct or to cause the direction of the management or policies of another organization, whether through voting power, ownership, contract or otherwise.

13. "Coordinate", "coordinated" or "coordination" means the coordination of an expenditure as prescribed by § 16-922.

14. "Coordinated party expenditures" means expenditures that are made by a political party to directly pay for goods or services on behalf of its nominee.

15. "District office" means an elected office established or organized pursuant to title 15 or 48.<sup>1</sup>

16. "Earmarked" means a designation, instruction or encumbrance between the transferor of a contribution and a transferee that requires the transferee to make a contribution to a clearly identified candidate.

17. "Election" means any election for any ballot measure in this state or any candidate election during a primary, general, recall, special or runoff election for any office in this state other than a federal office and a political party office prescribed by chapter 5, article 2 of this title.<sup>2</sup>

18. "Election cycle" means the two-year period beginning on January 1 in the year after a statewide general election and ending on December 31 in the year of a statewide general election or, for cities and towns, the two-year period beginning on the first



day of the calendar quarter after the calendar quarter in which the city's or town's second, runoff or general election is scheduled and ending on the last day of the calendar quarter in which the city's or town's immediately following second, runoff or general election is scheduled, however that election is designated by the city or town. For the purposes of a:

(a) Recall election, "election cycle" means the period between issuance of a recall petition serial number and the latest of the following:

(i) The date of the recall election that is called pursuant to § 19-209.

(ii) The date that a resignation is accepted pursuant to § 19-208.

(iii) The date that the receiving officer provides notice pursuant to § 19-208.01 that the number of signatures is insufficient.

(b) Special election, "election cycle" means the period between the date of issuance of a proclamation or order calling the special election and the last day of the calendar quarter in which the special election is held.

19. "Employee" means an individual who is entitled to compensation for labor or services performed for the individual's employer.

20. "Employer" means any person that pays compensation to and directs the labor or services of any individual in the course of employment.

21. "Enforcement officer" means the attorney general or the county, city or town attorney with authority to collect fines or issue penalties with respect to a given election pursuant to § 16-938.

22. "Entity" means a corporation, limited liability company, labor organization, partnership, trust, association, organization, joint venture, cooperative, unincorporated organization or association or other organized group that consists of more than one individual.

23. "Excess contribution" means a contribution that exceeds the applicable contribution limits for a particular election.

24. "Exclusive insurance contract" means an insurance producer's contract with an insurer that does either of the following:

(a) Prohibits the producer from soliciting insurance business for any other insurer.

(b) Requires a right of first refusal on all lines of insurance business written by the insurer and solicited by the producer.

25. "Expenditure" means any purchase, payment or other thing of value that is made by a person for the purpose of influencing an election.

26. "Family contribution" means any contribution that is provided to a candidate's committee by the parent, grandparent, aunt, uncle, child or sibling of the candidate or the candidate's spouse, including the spouse of any of the listed family members, regardless of whether the relation is established by marriage or adoption.

27. "Filing officer" means the secretary of state or the county, city or town officer in charge of elections for that jurisdiction who accepts statements and reports for those elections pursuant to § 16-928.

28. "Firewall" means a written policy that precludes one person from sharing information with another person.

29. "Identification" or "identify" means:

(a) For an individual, the individual's first and last name, residence location or street address and occupation and the name of the individual's primary employer.

(b) For any other person, the person's full name and physical location or street address.

30. "Incomplete contribution" means any contribution that is received by a committee for which the contributor's complete identification has not been obtained.

31. "Independent expenditure" means an expenditure by a person, other than a candidate committee, that complies with both of the following:

(a) Expressly advocates the election or defeat of a clearly identified candidate.

(b) Is not made in cooperation or consultation with or at the request or suggestion of the candidate or the candidate's agent.

32. "In-kind contribution" means a contribution of goods, services or anything of value that is provided without charge or at less than the usual and normal charge.

33. "Insurance producer" means a person that:

(a) Is required to be licensed to sell, solicit or negotiate insurance.

(b) Has an exclusive insurance contract with an insurer.

34. "Itemized" means that each contribution received or expenditure made is set forth separately.

35. "Labor organization" means any employee representation organization that exists for the purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment or other conditions of employment.

36. "Legislative office" means the office of representative in the state house of representatives or senator in the state senate.

37. "Mega PAC status" means official recognition that a political action committee has received contributions from five hundred or more individuals in amounts of ten dollars or more in the four-year period immediately before application to the secretary of state.

38. "Nominee" means a candidate who prevails in a primary election for partisan office and includes the nominee's candidate committee.

39. "Person" means an individual or a candidate, nominee, committee, corporation, limited liability company, labor organization, partnership, trust, association, organization, joint venture, cooperative or unincorporated organization or association.

40. "Personal monies" means any of the following:

(a) Assets to which the individual or individual's spouse has either legal title or an equitable interest.

(b) Salary and other earned income from bona fide employment of the individual or individual's spouse.

(c) Dividends and proceeds from the sale of investments of the individual or individual's spouse.

(d) Bequests to the individual or individual's spouse.

(e) Income to the individual or individual's spouse from revocable trusts for which the individual or individual's spouse is a beneficiary.

(f) Gifts of a personal nature to the individual or individual's spouse that would have been given regardless of whether the individual became a candidate or accepted a contribution.

(g) The proceeds of loans obtained by the individual or individual's spouse that are secured by collateral or security provided by the individual or individual's spouse.

(h) Family contributions.

41. "Political action committee" means an entity that is required to register as a political action committee pursuant to § 16-905.

42. "Political party" means a committee that meets the requirements for recognition as a political party pursuant to chapter 5 of this title.

43. "Primary purpose" means an entity's predominant purpose. Notwithstanding any other law or rule, an entity is not organized for the primary purpose of influencing an election if all of the following apply at the time the contribution or expenditure is made:

(a) The entity has tax exempt status under section 501(a) of the internal revenue code.<sup>3</sup>

(b) Except for a religious organization, assembly or institution, the entity has properly filed a form 1023 or form 1024 with the internal revenue service or the equivalent successor form designated by the internal revenue service.

(c) The entity's tax exempt status has not been denied or revoked by the internal revenue service.

(d) The entity has properly filed a form 990 with the internal revenue service or the equivalent successor form designated by the internal revenue service in compliance with the most recent filing deadline established by internal revenue service regulations or policies.

44. "Retention" means the election process by which a superior court judge, appellate court judge or supreme court justice is retained in office as prescribed by article VI, section 38 or 40, Constitution of Arizona.

45. "Separate segregated fund" means a fund established by a corporation, limited liability company, labor organization or partnership that is required to register as a political action committee.

46. "Social media messages" means forms of communication, including internet sites for social networking or blogging, through which users create a personal profile and participate in online communities to share information, ideas and personal messages.

47. "Sponsor" means any person that establishes, administers or contributes financial support to the administration of a political action committee or that has common or overlapping membership or officers with that political action committee.

48. "Standing committee" means a political action committee or political party that is active in more than one reporting jurisdiction in this state and that files a statement of organization in a format prescribed by the secretary of state.

49. "Statewide office" means the office of governor, secretary of state, state treasurer, attorney general, superintendent of public instruction, corporation commissioner or mine inspector.

50. "Surplus monies" means those monies of a terminating committee that remain after all of the committee's expenditures have been made, all debts have been extinguished and the committee ceases accepting contributions.

**Credits**

Added by Laws 2016, Ch. 79, § 11, eff. Nov. 5, 2016. Amended by Laws 2016, Ch. 347, § 2, eff. Nov. 5, 2016; Laws 2017, Ch. 233, § 1, eff. May 1, 2017; Laws 2018, Ch. 134, § 1.

<For disposition of the subject matter or derivation of sections repealed, added, or transferred and renumbered by Laws 1979, Ch. 209, §§ 2 to 5, effective January 1, 1980, see Disposition and Derivation Tables preceding Chapter 1.>

Notes of Decisions (5)

**Footnotes**

- 1 Section 15-101 et seq. or 48-101 et seq.
- 2 Section 16-821 et seq.
- 3 Internal Revenue Code sections may be found in Title 26 of U.S.C.A.

A. R. S. § 16-901, AZ ST § 16-901

Current through legislation effective May 10, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.



KeyCite Yellow Flag - Negative Treatment  
Proposed Legislation

Arizona Revised Statutes Annotated  
Title 16. Elections and Electors (Refs & Annos)  
Chapter 6. Campaign Contributions and Expenses (Refs & Annos)  
Article 1.1. Establishment of Committee (Refs & Annos)

A.R.S. § 16-905

§ 16-905. Committee qualification; requirements; exemption; adjustments

Effective: August 3, 2018  
Currentness

**A.** A candidate for election or retention shall register as a candidate committee if the candidate receives contributions or makes expenditures, in any combination, of at least one thousand dollars in connection with that candidacy.

**B.** For city and town elections, a candidate for election or retention shall register as a candidate committee if the candidate receives contributions or makes expenditures, in any combination, of at least five hundred dollars in connection with that candidacy.

**C.** An entity shall register as a political action committee if both of the following apply:

1. The entity is organized for the primary purpose of influencing the result of an election.

2. The entity knowingly receives contributions or makes expenditures, in any combination, of at least one thousand dollars in connection with any election during a calendar year.

**D.** A filing officer or enforcement officer shall make a rebuttable presumption that an entity is organized for the primary purpose of influencing the result of an election if the entity meets any of the following:

1. Except for a religious organization, assembly or institution, claims tax exempt status but had not filed form 1023 or form 1024 with the internal revenue service, or the equivalent successor form designated by the internal revenue service, before making a contribution or expenditure.

2. Made a contribution or expenditure and at that time had its tax exempt status revoked by the internal revenue service.

3. Made a contribution or expenditure and at that time failed to file form 990 with the internal revenue service, or the equivalent successor form designated by the internal revenue service, if required by law.

Decision No. 78040

E. Except as prescribed in subsections B and C of this section and § 16-938, a filing officer, enforcement officer or other officer of a city, town, county or other political subdivision of this state may not require an entity that claims tax exempt status under section 501(a) of the internal revenue code and that remains in good standing with the internal revenue service to do any of the following:

1. Register or file as a political action committee.
2. Report or otherwise disclose personally identifying information relating to individuals who have made contributions to that entity.
3. Disclose its schedule B, form 990.
4. Submit to an audit or subpoena or produce evidence regarding a potential campaign finance violation.

F. A fund that is established by a corporation, limited liability company, labor organization or partnership for the purpose of influencing the result of an election shall register as a political action committee.

G. An entity may register as a political party committee only as prescribed in chapter 5 of this title.<sup>1</sup>

H. A committee is not subject to state income tax and is not required to file a state income tax return.

I. The dollar amounts prescribed by subsections A and C of this section shall be increased every two years pursuant to § 16-931.

#### Credits

Added by Laws 2016, Ch. 79, § 12, eff. Nov. 5, 2016. Amended by Laws 2018, Ch. 77, § 1; Laws 2018, Ch. 134, § 2.

#### Notes of Decisions (1)

#### Footnotes

<sup>1</sup> Section 16-801 et seq.

A. R. S. § 16-905, AZ ST § 16-905

Current through legislation effective May 10, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

KeyCite Yellow Flag - Negative Treatment  
Proposed Legislation

Arizona Revised Statutes Annotated  
Title 16. Elections and Electors (Refs & Annos)  
Chapter 6. Campaign Contributions and Expenses (Refs & Annos)  
Article 1.1. Establishment of Committee (Refs & Annos)

A.R.S. § 16-906

§ 16-906. Committee statement of organization; amendment; committee limitation

Effective: May 1, 2017  
Currentness

- A. A committee shall file a statement of organization with the filing officer within ten days after qualifying as a committee.
- B. A statement of organization shall include the following committee information:
1. The committee name, mailing address, e-mail address, website, if any, and telephone number, if any, and the type of committee. The committee name shall include:
    - (a) For a candidate committee, the candidate's first or last name and, if the candidate has a candidate committee open for more than one office, the office sought.
    - (b) For a political action committee that is sponsored, the sponsor's name or commonly known nickname.
  2. The name, mailing address, e-mail address, website, if any, and telephone number of any sponsor.
  3. The name, physical location or street address, e-mail address, telephone number, occupation and employer of the committee's chairperson and treasurer. For a candidate committee, the candidate may serve as both chairperson and treasurer.
  4. For a candidate committee for a partisan office, the candidate's party affiliation.
  5. A listing of all banks or other financial institutions used by the committee.
  6. A statement that the committee chairperson and committee treasurer have read the filing officer's campaign finance and reporting guide, agree to comply with this article and articles 1, 1.2, 1.3, 1.4, 1.5, 1.6 and 1.7 of this chapter,<sup>1</sup> and agree to accept all notifications and service of process via the e-mail address provided by the committee.

Decision No. 78040

C. A committee shall file an amended statement of organization within ten days after any change in committee information.

D. On filing a statement of organization, the filing officer shall issue an identification number to the committee.

E. A standing committee shall file a statement of organization with the secretary of state and a copy of the statement in each jurisdiction in which the committee is active. Only the secretary of state shall issue an identification number.

F. A candidate may have only one committee in existence for the same office during the same election cycle.

G. On filing a statement of organization, a political action committee or political party may perform any lawful activity, including making contributions, making expenditures or conducting issue advocacy, without establishing a separate committee for each activity or specifying each activity in its statement of organization.

#### Credits

Added by Laws 2016, Ch. 79, § 12, eff. Nov. 5, 2016. Amended by Laws 2017, Ch. 233, § 2, eff. May 1, 2017.

#### Footnotes

1 Sections 16-901 et seq.; 16-911 et seq.; 16-921 et seq.; 16-925 et seq.; 16-931 et seq.; 16-933 et seq.; 16-937 et seq.

A. R. S. § 16-906, AZ ST § 16-906

Current through legislation effective May 10, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

KeyCite Yellow Flag - Negative Treatment

Proposed Legislation

Arizona Revised Statutes Annotated

Title 16. Elections and Electors (Refs &amp; Annos)

Chapter 6. Campaign Contributions and Expenses (Refs &amp; Annos)

Article 1.2. Contributions (Refs &amp; Annos)

A.R.S. § 16-911

## § 16-911. Exemption from definition of contribution

Effective: August 27, 2019

Currentness

A. A person may make any contribution not otherwise prohibited by law.

B. The following are not contributions:

1. The value of an individual's volunteer services or expenses that are provided without compensation or reimbursement, including the individual's:

(a) Travel expenses.

(b) Use of real or personal property.

(c) Cost of invitations, food or beverages.

(d) Use of e-mail, internet activity or social media messages, only if the individual's use is not paid for by the individual or any other person and if the e-mails, social media messages or other internet activities do not contain or include transmittal of a paid advertisement or paid fund-raising solicitation.

2. The costs incurred for covering or carrying a news story, commentary or editorial by a broadcasting station or cable television operator, video service provider, an internet website, a newspaper or another periodical publication, including an internet-based or electronic publication, if the cost for the news story, commentary or editorial is not paid for by and the medium is not owned or under the control of a candidate or committee.

3. Any payment to defray the expense of an elected official meeting with constituents or attending an informational tour, conference, seminar or presentation, if the payor or the elected official does not attempt to influence the result of an election and the payment is reported if required pursuant to title 38, chapter 3.1 or title 41, chapter 7, article 8.1,<sup>1</sup> or both.

Decision No. 78040



4. The payment by a political party to support its nominee, including:

(a) The printing or distribution of, or postage expenses for, voter guides, sample ballots, pins, bumper stickers, handbills, brochures, posters, yard signs and other similar materials distributed through the party.

(b) Coordinated party expenditures.

5. The payment by any person to defray a political party's operating expenses or party-building activities, including:

(a) Party staff and personnel.

(b) Studies and reports.

(c) Voter registration, recruitment, polling and turnout efforts.

(d) Party conventions and party meetings.

(e) Construction, purchase or lease of party buildings or facilities.

6. The value of any of the following to a committee:

(a) Interest earned on the committee's deposits or investments.

(b) Transfers between committees to reimburse expenses and distribute monies raised through a joint fund-raising effort, if the transfers comply with an agreement to reimburse and distribute monies that was executed before the joint fund-raising effort occurred.

(c) Payment of a committee's legal or accounting expenses by any person.

(d) An extension of credit for goods and services on a committee's behalf by a creditor if the terms are substantially similar to extensions of credit to nonpolitical debtors that are of similar risk and size of obligation. The creditor must make a commercially reasonable attempt to collect the debt, except that if an extension of credit remains unsatisfied by the committee after six months the committee is deemed to have received a contribution but the creditor is not deemed to have made a contribution.

7. The value of nonpartisan communications that are intended to encourage voter registration and turnout efforts.

8. Any payment to a filing officer for arguments in a publicity pamphlet.

9. The payment by any sponsor or its affiliate for the costs of establishing, administering and soliciting contributions from its employees, members, executives, stockholders and retirees and their families to the sponsor's separate segregated fund.

10. Any payment by any entity for the costs of communicating with its employees, members, executives, stockholders and retirees and their families about any subject, without regard to whether those communications are made in coordination with any candidate or candidate's agent.

11. The value of allowing a candidate or a committee's representative to appear at any private residence or at the facilities of any entity to speak about the candidate's campaign or about a ballot measure, if the venue is furnished by the venue's owner, is not paid for by a third party and is not a sports stadium, coliseum, convention center, hotel ballroom, concert hall or other similar arena that is generally open to the public.

12. The costs of hosting a debate or candidates' forum, if at least two opposing candidates, with respect to any given office sought, or representatives of at least two opposing ballot measure campaigns, with respect to any measure on the ballot, are invited with the same or similar advance notice and method of invitation.

13. The preparation and distribution of voter guides, subject to the following:

(a) A featured candidate or ballot measure shall not receive greater prominence or substantially more space in the voter guide than any other candidate or ballot measure.

(b) The voter guide shall not include any message that constitutes express advocacy.

14. Monies that are loaned by a financial institution in the ordinary course of business and not for the purpose of influencing the results of an election, except that the loan is deemed a pro rata contribution by any endorser or guarantor, other than the candidate's spouse.

15. The costs of publishing a book or producing a documentary, if the publication and production are for distribution to the general public through traditional distribution mechanisms or a fee is obtained for the purchase of the publication or viewing of the documentary.

C. This section does not imply that any transactions that are not specifically listed in subsection B of this section are contributions unless those transactions otherwise meet the definition of contribution as defined in § 16-901.

#### Credits

Added by Laws 2016, Ch. 79, § 12, eff. Nov. 5, 2016. Amended by Laws 2016, Ch. 346, § 1, eff. Nov. 5, 2016; Laws 2019, Ch. 163, § 8.

Notes of Decisions (1)

Decision No. 78040

Footnotes

1 Section 38-541 et seq. or 41-1231 et seq.

A. R. S. § 16-911, AZ ST § 16-911

Current through legislation effective May 10, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

KeyCite Yellow Flag - Negative Treatment  
Proposed Legislation

Arizona Revised Statutes Annotated  
Title 16. Elections and Electors (Refs & Annos)  
Chapter 6. Campaign Contributions and Expenses (Refs & Annos)  
Article 1.2. Contributions (Refs & Annos)

A.R.S. § 16-913

## § 16-913. Candidate committee contribution limits; requirements

Effective: November 5, 2016  
Currentness

- A.** A candidate committee shall not make contributions to a candidate committee for another candidate.
- B.** A candidate committee may transfer unlimited contributions to any one or more other candidate committees for that same candidate under the following conditions:
1. A candidate committee for a city or town candidate shall not transfer contributions to that same candidate's committee for a statewide or legislative office.
  2. If a candidate committee for a city or town office transfers contributions to a candidate committee for a county office for that same candidate, the candidate committee for the county office shall not transfer contributions to a statewide or legislative candidate committee for that same candidate during the twenty-four months immediately following that transfer of contributions to the county candidate committee.
  3. Contributions originally made to the transferring candidate committee are deemed to be contributions to the receiving candidate committee. On transfer, an individual's aggregate contributions to both candidate committees during the election cycle shall not exceed the individual's contribution limit for that candidate.
- C.** A candidate committee shall not knowingly accept contributions in excess of the contribution limits prescribed by law. A candidate committee that unknowingly accepts an excess contribution shall refund or reattribute any excess contribution within sixty days after receipt of the contribution. A candidate committee may reattribute an excess contribution only if both of the following apply:
1. The excess contribution was received from an individual contributor.
  2. The individual contributor authorizes the candidate committee to reattribute the excess amount to another individual who was identified as a joint account holder in the original instrument used to make the excess contribution.

Decision No. 78040

D. A candidate committee may accept contributions only from an individual, a partnership, a candidate committee, a political action committee or a political party.

E. A candidate committee may make unlimited contributions to a person other than a candidate's committee.

F. A candidate may contribute unlimited personal monies to the candidate's own candidate committee.

**Credits**

Added by Laws 2016, Ch. 79, § 12, eff. Nov. 5, 2016. Amended by Laws 2016, Ch. 347, § 5, eff. Nov. 5, 2016.

A. R. S. § 16-913, AZ ST § 16-913

Current through legislation effective May 10, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.



KeyCite Yellow Flag - Negative Treatment

Proposed Legislation

Arizona Revised Statutes Annotated

Title 16. Elections and Electors (Refs & Annos)

Chapter 6. Campaign Contributions and Expenses (Refs & Annos)

Article 1.2. Contributions (Refs & Annos)

A.R.S. § 16-916

§ 16-916. Corporation, limited liability company and labor organization  
contributions; separate segregated fund; limits; requirements

Effective: November 5, 2016

Currentness

A. A corporation, limited liability company or labor organization shall not make contributions to a candidate committee.

B. A corporation, limited liability company or labor organization may make unlimited contributions to persons other than candidate committees.

C. A corporation, limited liability company or labor organization may sponsor a separate segregated fund. Employees, members, executives, stockholders and retirees and their families of a corporation, limited liability company or labor organization and any subsidiary or affiliate of a corporation, limited liability company or labor organization may make contributions to the separate segregated fund, subject to the following:

1. The separate segregated fund must register as a political action committee.

2. The sponsor or its affiliate may pay the administrative, personnel and fund-raising expenses of its separate segregated fund, which shall not be deemed contributions to the fund.

3. The sponsor or its separate segregated fund may solicit contributions from the sponsor's, sponsor's affiliates' or sponsor's subsidiaries' employees, members, executives, stockholders and retirees and their families. The following additional restrictions apply:

(a) With respect to an insurer, an insurer or its separate segregated fund may also solicit contributions from an insurance producer's employees, members, executives, stockholders and retirees and their families.

(b) With respect to a trade association or membership organization, the association or organization may solicit contributions from its members' employees, executives, stockholders, subsidiaries and retirees and their families.

Decision No. 78040

4. A sponsor or its affiliate or a trade association or membership organization may facilitate the making of contributions to its separate segregated fund by establishing a payroll deduction system or other similar payment transfer method.

5. A sponsor, trade association, membership organization or separate segregated fund may rely on the federal election commission's written guidance interpreting 52 United States Code § 30118(b) and rules adopted under that section when interpreting this subsection, if otherwise consistent with this article and articles 1, 1.1, 1.3, 1.4, 1.5, 1.6 and 1.7 of this chapter.<sup>1</sup>

#### **Credits**

Added by Laws 2016, Ch. 79, § 12, eff. Nov. 5, 2016.

#### **Footnotes**

<sup>1</sup> Sections 16-901 et seq.; 16-905 et seq.; 16-921 et seq.; 16-925 et seq.; 16-931 et seq.; 16-933 et seq.; 16-937 et seq.

A. R. S. § 16-916, AZ ST § 16-916

Current through legislation effective May 10, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

KeyCite Yellow Flag - Negative Treatment  
Proposed Legislation

Arizona Revised Statutes Annotated  
Title 16. Elections and Electors (Refs & Annos)  
Chapter 6. Campaign Contributions and Expenses (Refs & Annos)  
Article 1.2. Contributions (Refs & Annos)

A.R.S. § 16-918

## § 16-918. Earmarking prohibited

Effective: November 5, 2016  
Currentness

A contributor shall not give and a committee shall not accept a contribution that has been earmarked for a candidate.

### Credits

Added by Laws 2016, Ch. 79, § 12, eff. Nov. 5, 2016.

A. R. S. § 16-918, AZ ST § 16-918

Current through legislation effective May 10, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

Decision No. 78040

KeyCite Yellow Flag - Negative Treatment  
Proposed Legislation

Arizona Revised Statutes Annotated  
Title 16. Elections and Electors (Refs & Annos)  
Chapter 6. Campaign Contributions and Expenses (Refs & Annos)  
Article 1.3. Expenditures (Refs & Annos)

A.R.S. § 16-922

## § 16-922. Independent and coordinated expenditures

Effective: November 5, 2016  
Currentness

**A.** Any person may make independent expenditures.

**B.** An expenditure is not an independent expenditure if either of the following applies:

1. There is actual coordination with respect to an expenditure between a candidate or candidate's agent and the person making the expenditure or that person's agent.

2. Both of the following apply:

(a) The expenditure is based on nonpublic information about a candidate's or candidate committee's plans or needs that the candidate or candidate's agent provides to the person making the expenditure or that person's agent.

(b) The candidate or candidate's agent provides the nonpublic information with an intent toward having the expenditure made.

**C.** In evaluating whether an expenditure is an independent expenditure, a filing officer or enforcement officer may consider the following to be rebuttable evidence of coordination:

1. Any agent of the person making the expenditure is also an agent of the candidate whose election or whose opponent's defeat is being advocated by the expenditure.

2. In the same election cycle, the person making the expenditure or that person's agent is or has been authorized to raise or spend monies on the candidate's behalf.

3. In the same election cycle, the candidate is or has been authorized to raise money or solicit contributions on behalf of the person making the expenditure.

Decision No. 78040

**D.** Notwithstanding subsection C of this section, coordination does not exist under either of the following:

1. If the person making the expenditure maintains a firewall between the person and that person's agent in compliance with all of the following:

(a) The person's agent did not participate in deciding to make the expenditure or in deciding the content, timing or targeting of the expenditure.

(b) The person making the expenditure has a written policy establishing the firewall and its requirements.

(c) The person making the expenditure and the person's agent followed the written policy regarding the firewall.

2. Solely because an agent of a person making the expenditure serves or has served on a candidate's host committee for a fund-raising event.

**E.** An expenditure that is coordinated with a candidate, other than a coordinated party expenditure, is deemed an in-kind contribution to the candidate.

**F.** An entity that makes an independent expenditure, other than an individual or a committee, shall file independent expenditure reports pursuant to § 16-926, subsection H.

**Credits**

Added by Laws 2016, Ch. 79, § 12, eff. Nov. 5, 2016. Amended by Laws 2016, Ch. 346, § 3, eff. Nov. 5, 2016.

A. R. S. § 16-922, AZ ST § 16-922

Current through legislation effective May 10, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).





KeyCite Red Flag - Severe Negative Treatment

Enacted Legislation Amended by 2021 Ariz. Legis. Serv. Ch. 96 (H.B. 2073) (WEST).

KeyCite Yellow Flag - Negative Treatment Proposed Legislation

## Arizona Revised Statutes Annotated

## Title 16. Elections and Electors (Refs &amp; Annos)

## Chapter 6. Campaign Contributions and Expenses (Refs &amp; Annos)

## Article 1.4. Reporting Requirements and Disclosure Statements (Refs &amp; Annos)

A.R.S. § 16-926

## § 16-926. Campaign finance reports; contents

Effective: November 5, 2016

Currentness

**A.** A committee shall file campaign finance reports with the filing officer. The secretary of state's instructions and procedures manual adopted pursuant to § 16-452 shall prescribe the format for all reports and statements.

**B.** A campaign finance report shall set forth:

1. The amount of cash on hand at the beginning of the reporting period.

2. Total receipts during the reporting period, including:

(a) An itemized list of receipts in the following categories, including the source, amount and date of receipt, together with the total of all receipts in each category:

(i) Contributions from individuals whose contributions exceed fifty dollars for that election cycle, including identification of the contributor's occupation and employer.

(ii) Contributions from candidate committees.

(iii) Contributions from political action committees.

(iv) Contributions from political parties.

(v) Contributions from partnerships.

Decision No. 78040

(vi) For a political action committee or political party, contributions from corporations and limited liability companies, including identification of the corporation's or limited liability company's file number issued by the corporation commission.

(vii) For a political action committee or political party, contributions from labor organizations, including identification of the labor organization's file number issued by the corporation commission.

(viii) For a candidate committee, a candidate's contribution of personal monies.

(ix) All loans, including identification of any endorser or guarantor other than a candidate's spouse, and the contribution amount endorsed or guaranteed by each.

(x) Rebates and refunds.

(xi) Interest on committee monies.

(xii) The fair market value of in-kind contributions received.

(xiii) Extensions of credit that remain outstanding, including identification of the creditor and the purpose of the extension.

(b) The aggregate amount of contributions from all individuals whose contributions do not exceed fifty dollars for the election cycle.

3. An itemized list of all disbursements in excess of two hundred fifty dollars during the reporting period in the following categories, including the recipient, the recipient's address, a description of the disbursement and the amount and date of the disbursement, together with the total of all disbursements in each category:

(a) Disbursements for operating expenses.

(b) Contributions to candidate committees.

(c) Contributions to political action committees.

(d) Contributions to political parties.

(e) Contributions to partnerships.

(f) For a political action committee or political party, contributions to corporations and limited liability companies, including identification of the corporation's or limited liability company's file number issued by the corporation commission.

Decision No. 78040

(g) For a political action committee or political party, contributions to labor organizations, including identification of the labor organization's file number issued by the corporation commission.

(h) Repayment of loans.

(i) Refunds of contributions.

(j) Loans made.

(k) The value of in-kind contributions provided.

(l) Independent expenditures that are made to advocate the election or defeat of a candidate, including identification of the candidate, office sought by the candidate, election date, mode of advertising and distribution or publication date.

(m) Expenditures to advocate the passage or defeat of a ballot measure, including identification of the ballot measure, ballot measure serial number, election date, mode of advertising and distribution or publication date.

(n) Expenditures to advocate for or against the issuance of a recall election order or for the election or defeat of a candidate in a recall election, including identification of the officer to be recalled or candidate supported or opposed, mode of advertising and distribution or publication date.

(o) Any other disbursements or expenditures.

4. The total sum of all receipts and disbursements for the reporting period.

5. A certification by the committee treasurer, issued under penalty of perjury, that the contents of the report are true and correct.

C. For the purposes of reporting under subsection B of this section:

1. A contribution is deemed to be received either on the date the committee knowingly takes possession of the contribution or the date of the check or credit card payment. For an in-kind contribution of services, the contribution is deemed made either on the date the services are performed or the date the committee receives the services.

2. An expenditure or disbursement is deemed made either on the date the committee authorizes the monies to be spent or the date the monies are withdrawn from the committee's account. For a transaction by check, the expenditure or disbursement is deemed made on the date the committee signs the check. For a credit card transaction on paper, the expenditure or disbursement is deemed made on the date the committee signs the authorization to charge the credit card. For an electronic transaction, an expenditure or disbursement is deemed made on the date the committee electronically authorizes the charge. For an agreement

to purchase goods or services, the expenditure or disbursement is deemed made either on the date the parties enter into the agreement or the date the purchase order is issued.

3. A committee may record its transactions using any of the methods authorized by this subsection but for each type of contribution, expenditure or disbursement made or received, the committee shall use a consistent method of recording transactions throughout the election cycle.

**D.** The amount of an in-kind contribution of services shall be equal to the usual and normal charges for the services on the date performed.

**E.** If any receipt or disbursement is earmarked, the committee shall report the identity of the person to whom the receipt or disbursement is earmarked.

**F.** Candidate committee reports shall be cumulative for the election cycle to which they relate. Political action committee and political party reports shall be cumulative for a two-year election cycle ending in the year of a statewide general election. If there has been no change during the reporting period in an item listed in the immediately preceding report, only the amount need be carried forward.

**G.** For a political action committee that receives individual contributions through a payroll deduction plan, that committee is not required to separately itemize each contribution received from the contributor during the reporting period. In lieu of itemization, the committee may report all of the following:

1. The aggregate amount of contributions received from the contributor through the payroll deduction plan during the reporting period.

2. The individual's identity.

3. The amount deducted per pay period.

**H.** An entity that makes independent expenditures or ballot measure expenditures in excess of one thousand dollars during a reporting period shall file an expenditure report with the filing officer for the applicable reporting period. Expenditure reports shall identify the candidate or ballot measure supported or opposed, office sought by the candidate, if any, election date, mode of advertising and first date of publication, display, delivery or broadcast of the advertisement.

#### **Credits**

Added by Laws 2016, Ch. 79, § 12, eff. Nov. 5, 2016. Amended by Laws 2016, Ch. 346, § 4, eff. Nov. 5, 2016.

A. R. S. § 16-926, AZ ST § 16-926

Current through legislation effective May 10, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

Arizona Revised Statutes Annotated  
Title 18. Information Technology (Refs & Annos)  
Chapter 4. Network Services (Refs & Annos)  
Article 3. Secretary of State

A.R.S. § 18-444  
Formerly cited as A.R.S. § 38-542

§ 18-444. Duty to file financial disclosure statement; contents; exceptions

Effective: January 1, 2017  
Currentness

A. In addition to other statements and reports required by law, every public officer, as a matter of public record, shall file with the secretary of state on a form prescribed by the secretary of state a verified financial disclosure statement covering the preceding calendar year. The statement shall disclose:

1. The name and home or work address of the public officer, whether the public officer's spouse is a member of the public officer's household, the number of minor children who are members of the public officer's household and all names and addresses under which each does business. If disclosure of the identity of the public officer's spouse or minor child would otherwise be required, a public officer may comply with the identification requirement by using the term "spouse" or "minor child", as applicable.

2. The name and address of each employer and of each other source of compensation other than gifts amounting to more than one thousand dollars received during the preceding calendar year by the public officer and members of his household in their own names, or by any other person for the use or benefit of the public officer or members of his household, a description of the services for which the compensation was received and the nature of the employer's business. This paragraph shall not be construed to require the disclosure of individual items of compensation that constituted a portion of the gross income of the business from which the public officer or members of his household derived compensation.

3. For a controlled business, a description of the goods or services provided by the business, and if any single source of compensation to the business during the preceding calendar year amounts to more than ten thousand dollars and is more than twenty-five percent of the gross income of the business, the disclosure shall also include a description of the goods or services provided to the source of compensation. For a dependent business the statement shall disclose a description of the goods or services provided by the business and a description of the goods or services provided to the source of compensation from which the dependent business derived the amount of gross income described in § 38-541, paragraph 4. If the source of compensation for a controlled or dependent business is a business, the statement shall disclose a description of the business activities engaged in by the source of compensation.

4. The names and addresses of all businesses and trusts in which the public officer or members of his household, or any other person for the use or benefit of the public officer or members of his household, had an ownership or beneficial interest of over one thousand dollars at any time during the preceding calendar year, and the names and addresses of all businesses and trusts in which the public officer or any member of his household held any office or had a fiduciary relationship at any time during the preceding calendar year, together with the amount or value of the interest and a description of the interest, office or relationship.

Decision No. 78040



5. All Arizona real property interests and real property improvements, including specific location and approximate size, in which the public officer, any member of his household or a controlled or dependent business held legal title or a beneficial interest at any time during the preceding calendar year, and the value of any such interest, except that this paragraph does not apply to a real property interest and improvements thereon used as the primary personal residence or for the personal recreational use of the public officer. If a public officer, any member of his household or a controlled or dependent business acquired or divested any such interest during the preceding calendar year, he shall also disclose that the transaction was made and the date it occurred. If the controlled or dependent business is in the business of dealing in real property interests or improvements, disclosure need not include individual parcels or transactions as long as the aggregate value of all parcels of such property is reported.

6. The names and addresses of all creditors to whom the public officer or members of his household, in their own names or in the name of any other person, owed a debt of more than one thousand dollars or to whom a controlled business or a dependent business owed a debt of more than ten thousand dollars which was also more than thirty percent of the total business indebtedness at any time during the preceding calendar year, listing each such creditor. This paragraph shall not be construed to require the disclosure of debts owed by the public officer or any member of his household resulting from the ordinary conduct of a business other than a controlled or dependent business nor shall disclosure be required of credit card transactions, retail installment contracts, debts on residences or recreational property exempt from disclosure under paragraph 5 of this subsection, debts on motor vehicles not used for commercial purposes, debts secured by cash values on life insurance or debts owed to relatives. It is sufficient disclosure of a creditor if the name and address of a person to whom payments are made is disclosed. If the public officer, any member of his household or a controlled or dependent business incurred or discharged a debt which is reportable under this subsection during the preceding calendar year, the report shall disclose that the transaction was made and the date it occurred.

7. The identification and amount of each debt exceeding one thousand dollars owed at any time during the preceding calendar year to the public officer and members of his household in their own names, or to any other person for the use or benefit of the public officer or any member of his household. The disclosure shall include the identification and amount of each debt exceeding ten thousand dollars to a controlled business or dependent business which was also more than thirty percent of the total indebtedness to the business at any time during the preceding calendar year. This paragraph shall not be construed to require the disclosure of debts from the ordinary conduct of a business other than a controlled or dependent business. If the public officer, any member of his household or a controlled or dependent business incurred or discharged a debt which is reportable under this subsection during the preceding year, the report shall disclose that the transaction was made and the date it occurred.

8. The name of each source of any gift, or accumulated gifts from a single source, of more than five hundred dollars received by the public officer and members of his household in their own names during the preceding calendar year, or by any other person for the use or benefit of the public officer or any member of his household except gifts received by will or by virtue of intestate succession, or received by way of distribution from any inter vivos or testamentary trust established by a spouse or by an ancestor, or gifts received from any other member of the household or relatives to the second degree of consanguinity.

9. A list of all business licenses issued to, held by or in which the public officer or any member of his household had an interest at any time during the preceding calendar year, including the name in which the license was issued, the type of business and its location.

10. A list of all bonds, together with their value, issued by this state or any political subdivision of this state and held at any time during the preceding calendar year by the public officer or any member of his household, which bonds issued by a single entity had a value in excess of one thousand dollars. If the public officer or any member of his household acquired or divested

any bonds during the preceding calendar year which are reportable under this paragraph, the fact that the transaction occurred and the date shall also be shown.

11. The name of each meeting, conference or other event where the public officer is participating in the public officer's official capacity if travel-related expenses of one thousand dollars or more were incurred on behalf of the public officer and the travel-related expenses are not paid by the public officer.

**B.** If an amount or value is required to be reported pursuant to this section, it is sufficient to report whether the amount or value of the equity interest falls within:

1. Category 1, one thousand dollars to twenty-five thousand dollars.

2. Category 2, more than twenty-five thousand dollars to one hundred thousand dollars.

3. Category 3, more than one hundred thousand dollars.

**C.** This section does not require the disclosure of any information that is privileged by law.

**D.** The statement required to be filed pursuant to subsection A shall be filed by all persons who qualified as public officers at any time during the preceding calendar year on or before January 31 of each year with the exceptions that a public officer appointed to fill a vacancy shall, within sixty days following his taking of such office, file a financial disclosure statement covering as his annual period the twelve month period ending with the last full month prior to the date of his taking office, and a public officer whose final term expires less than thirty-one days into the immediately following calendar year may file the public officer's final financial disclosure at the same time as the disclosure for the last immediately preceding year.

**E.** The secretary of state shall prepare written guidelines, forms and samples for completing the financial disclosure statement required by this section. A copy of the guidelines, forms and samples shall be distributed to each public officer and shall be made available to each candidate required to file a financial disclosure statement pursuant to § 38-543.

**F.** Beginning January 1, 2017, the statement required to be filed in subsection D of this section may be filed by the public officer in a form prescribed by the secretary of state that includes authorization for future filings to be submitted in an electronic format. Any subsequent filings required to be filed in subsection D of this section may be filed in an electronic format as prescribed by the secretary of state. Beginning January 1, 2017, any statements that are required to be filed by a local public officer pursuant to an ordinance, rule, resolution or regulation adopted pursuant to § 38-545 may be filed in an electronic format as prescribed by the secretary of state.

#### **Credits**

Added as § 38-542 by Laws 1974, Ch. 199, § 5. Amended by Laws 1983, Ch. 328, § 7, eff. Jan. 1, 1984; Laws 2011, Ch. 332, § 27; Laws 2014, Ch. 149, § 1, eff. Jan. 1, 2017. Renumbered as § 18-444 by Laws 2016, Ch. 80, § 3. Amended by Laws 2016, Ch. 196, § 2, eff. Jan. 1, 2017.

Notes of Decisions (5)

A. R. S. § 18-444, AZ ST § 18-444

Current through legislation effective May 10, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

Decision No. 78040



KeyCite Red Flag - Severe Negative Treatment

Enacted Legislation Amended by 2021 Ariz. Legis. Serv. Ch. 206 (S.B. 1221) (WEST).

## Arizona Revised Statutes Annotated

## Title 21. Juries (Refs &amp; Annos)

## Chapter 4. Grand Juries (Refs &amp; Annos)

## Article 2. State Grand Jury (Refs &amp; Annos)

## A.R.S. § 21-422

## § 21-422. Powers and duties

## Currentness

A. The law applicable to county grand juries, including their powers, duties and functions, applies to the state grand juries except insofar as it is in conflict with this article. The supreme court shall adopt rules to govern the procedures of state grand juries.

B. The state grand jury shall investigate and return indictments for only those offenses or violations of law arising out of or in connection with:

1. The determination or collection of state taxes, the registration or failure to register securities, the offer or sale of securities, the offer or sale of interests in land, the formation or operation of banks, insurance companies, pension funds, labor unions, professional sports enterprises, corporate enterprises, or business enterprises, the making or collecting of loans, events leading to receivership or declaration of bankruptcy by a business enterprise, the sale or purchase of goods or services by or for the state or political subdivisions, bribery, obstruction of justice, hindering prosecution or any form of intentional, knowing or corrupt misconduct involving any person compensated by public funds.

2. Any fraud, theft or possession, receipt, sale or transportation of stolen property or other contraband, or gambling or prostitution or narcotics, which occurs in more than one county or which occurs in one county and affects the residents of another county or which may be prosecuted by more than one county attorney.

3. Perjury, false swearing, unsworn falsification, or any violation of title 13, chapter 28<sup>1</sup> in connection with any state grand jury proceeding, committed by any person testifying before it or in any trial or other proceeding involving any indictment returned by a state grand jury.

4. Any perjury by subornation or attempted perjury by subornation relating to testimony before it or in any trial or other proceeding involving any indictment returned by a state grand jury.

5. Any violation of title 13, chapter 23<sup>2</sup> or § 38-421 or 39-161.

6. Any violation of title 13, chapter 35.1 if committed using a computer or network as defined in § 13-2301 and if any part of the conduct either:

Decision No. 78040

(a) Occurs in more than one county, state or country.

(b) Affects the residents of another county, state or country.

(c) May be prosecuted by more than one county, state or country.

7. Any criminal wrongdoing that is referred in writing by a county attorney and that is accepted in writing by the attorney general.

**C.** If a state grand jury, pursuant to an investigation under subsection B of this section, learns of an offense for which it lacks jurisdiction to indict, the grand jury shall direct the attorney general to inform the appropriate prosecutorial authority.

**D.** Nothing in this article shall be construed to limit the jurisdiction of the county grand juries or county attorneys, nor shall an investigation by a state grand jury be deemed preemptive of a previously instituted investigation by another grand jury or agency having jurisdiction under the same subject matter unless good cause is shown.

#### **Credits**

Added by Laws 1975, Ch. 124, § 1. Amended by Laws 1977, Ch. 154, § 11; Laws 1978, Ch. 201, § 329, eff. Oct. 1, 1978; Laws 1980, Ch. 229, § 36, eff. April 23, 1980; Laws 1984, Ch. 304, § 4; Laws 2000, Ch. 189, § 34.

#### **Notes of Decisions (2)**

#### **Footnotes**

1 Section 13-2801 et seq.

2 Section 13-2301 et seq.

A. R. S. § 21-422, AZ ST § 21-422

Current through legislation effective May 10, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).



Arizona Revised Statutes Annotated

Title 38. Public Officers and Employees (Refs & Annos)

Chapter 2. Qualification and Tenure

Article 7. Impeachment of State and Judicial Officers (Refs & Annos)

A.R.S. § 38-311

## § 38-311. Officers subject to impeachment

Currentness

The governor, every state and judicial officer, except justices of courts not of record, shall be liable to impeachment for high crimes, misdemeanors or malfeasance in office.

Notes of Decisions (12)

A. R. S. § 38-311, AZ ST § 38-311

Current through legislation effective May 10, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

Decision No. 78040

Arizona Revised Statutes Annotated  
Title 38. Public Officers and Employees (Refs & Annos)  
Chapter 2. Qualification and Tenure  
Article 7. Impeachment of State and Judicial Officers (Refs & Annos)

A.R.S. § 38-312

## § 38-312. Articles of impeachment

Currentness

Impeachment shall be instituted in the house of representatives by resolution, and shall be conducted by managers elected by the house of representatives, who shall prepare articles of impeachment, present them at the bar of the senate and prosecute them. The hearing shall be heard before the senate sitting as a court of impeachment.

Notes of Decisions (1)

A. R. S. § 38-312, AZ ST § 38-312

Current through legislation effective May 10, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

Decision No. 78040

Arizona Revised Statutes Annotated  
Title 38. Public Officers and Employees (Refs & Annos)  
Chapter 3. Conduct of Office  
Article 3.1. Public Meetings and Proceedings (Refs & Annos)

A.R.S. § 38-431

§ 38-431. Definitions

Effective: August 3, 2018  
Currentness

In this article, unless the context otherwise requires:

1. "Advisory committee" or "subcommittee" means any entity, however designated, that is officially established, on motion and order of a public body or by the presiding officer of the public body, and whose members have been appointed for the specific purpose of making a recommendation concerning a decision to be made or considered or a course of conduct to be taken or considered by the public body.
2. "Executive session" means a gathering of a quorum of members of a public body from which the public is excluded for one or more of the reasons prescribed in § 38-431.03. In addition to the members of the public body, officers, appointees and employees as provided in § 38-431.03 and the auditor general as provided in § 41-1279.04, only individuals whose presence is reasonably necessary in order for the public body to carry out its executive session responsibilities may attend the executive session.
3. "Legal action" means a collective decision, commitment or promise made by a public body pursuant to the constitution, the public body's charter, bylaws or specified scope of appointment and the laws of this state.
4. "Meeting":
  - (a) Means the gathering, in person or through technological devices, of a quorum of the members of a public body at which they discuss, propose or take legal action, including any deliberations by a quorum with respect to that action.
  - (b) Includes:
    - (i) A one-way electronic communication by one member of a public body that is sent to a quorum of the members of a public body and that proposes legal action.
    - (ii) An exchange of electronic communications among a quorum of the members of a public body that involves a discussion, deliberation or the taking of legal action by the public body concerning a matter likely to come before the public body for action.

Decision No. 78040

5. "Political subdivision" means all political subdivisions of this state, including without limitation all counties, cities and towns, school districts and special districts.

6. "Public body" means the legislature, all boards and commissions of this state or political subdivisions, all multimember governing bodies of departments, agencies, institutions and instrumentalities of this state or political subdivisions, including without limitation all corporations and other instrumentalities whose boards of directors are appointed or elected by this state or a political subdivision. Public body includes all quasi-judicial bodies and all standing, special or advisory committees or subcommittees of, or appointed by, the public body. Public body includes all commissions and other public entities established by the Arizona Constitution or by way of ballot initiative, including the independent redistricting commission, and this article applies except and only to the extent that specific constitutional provisions supersede this article.

7. "Quasi-judicial body" means a public body, other than a court of law, possessing the power to hold hearings on disputed matters between a private person and a public agency and to make decisions in the general manner of a court regarding such disputed claims.

#### Credits

Added by Laws 1962, Ch. 138, § 2. Amended by Laws 1974, Ch. 196, § 1, eff. May 22, 1974; Laws 1978, Ch. 86, § 1; Laws 1982, Ch. 278, § 1; Laws 1985, Ch. 203, § 1; Laws 2000, Ch. 358, § 1; Laws 2007, Ch. 71, § 1; Laws 2012, Ch. 131, § 1; Laws 2018, Ch. 229, § 1.

#### Notes of Decisions (65)

A. R. S. § 38-431, AZ ST § 38-431

Current through legislation effective May 10, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

Arizona Revised Statutes Annotated  
Title 38. Public Officers and Employees (Refs & Annos)  
Chapter 3. Conduct of Office  
Article 3.1. Public Meetings and Proceedings (Refs & Annos)

A.R.S. § 38-431.01

§ 38-431.01. Meetings shall be open to the public

Effective: August 3, 2018  
Currentness

**A.** All meetings of any public body shall be public meetings and all persons so desiring shall be permitted to attend and listen to the deliberations and proceedings. All legal action of public bodies shall occur during a public meeting.

**B.** All public bodies shall provide for the taking of written minutes or a recording of all their meetings, including executive sessions. For meetings other than executive sessions, the minutes or recording shall include:

1. The date, time and place of the meeting.
2. The members of the public body recorded as either present or absent.
3. A general description of the matters considered.
4. An accurate description of all legal actions proposed, discussed or taken, including a record of how each member voted. The minutes shall also include the names of the members who propose each motion and the names of the persons, as given, who make statements or present material to the public body and a reference to the legal action about which they made statements or presented material.

**C.** Minutes of executive sessions shall include items set forth in subsection B. paragraphs 1, 2 and 3 of this section, an accurate description of all instructions given pursuant to § 38-431.03, subsection A. paragraphs 4, 5 and 7 and other matters as may be deemed appropriate by the public body.

**D.** The minutes or a recording of a meeting shall be available for public inspection three working days after the meeting except as otherwise specifically provided by this article.

**E.** A public body of a city or town with a population of more than two thousand five hundred persons shall:

1. Within three working days after a meeting, except for subcommittees and advisory committees, post on its website, if applicable, either:

Decision No. 78040

(a) A statement describing the legal actions taken by the public body of the city or town during the meeting.

(b) Any recording of the meeting.

2. Within two working days following approval of the minutes, post approved minutes of city or town council meetings on its website, if applicable, except as otherwise specifically provided by this article.

3. Within ten working days after a subcommittee or advisory committee meeting, post on its website, if applicable, either:

(a) A statement describing legal action, if any.

(b) A recording of the meeting.

**F.** All or any part of a public meeting of a public body may be recorded by any person in attendance by means of a tape recorder or camera or any other means of sonic reproduction, provided that there is no active interference with the conduct of the meeting.

**G.** The secretary of state for state public bodies, the city or town clerk for municipal public bodies and the county clerk for all other local public bodies shall conspicuously post open meeting law materials prepared and approved by the attorney general on their website. A person elected or appointed to a public body shall review the open meeting law materials at least one day before the day that person takes office.

**H.** A public body may make an open call to the public during a public meeting, subject to reasonable time, place and manner restrictions, to allow individuals to address the public body on any issue within the jurisdiction of the public body. At the conclusion of an open call to the public, individual members of the public body may respond to criticism made by those who have addressed the public body, may ask staff to review a matter or may ask that a matter be put on a future agenda. However, members of the public body shall not discuss or take legal action on matters raised during an open call to the public unless the matters are properly noticed for discussion and legal action.

**I.** A member of a public body shall not knowingly direct any staff member to communicate in violation of this article.

**J.** Any posting required by subsection E of this section must remain on the applicable website for at least one year after the date of the posting.

#### **Credits**

Added by Laws 1962, Ch. 138, § 2. Amended by Laws 1974, Ch. 196, § 2, eff. May 22, 1974; Laws 1975, Ch. 48, § 1; Laws 1978, Ch. 86, § 2; Laws 1982, Ch. 278, § 2; Laws 2000, Ch. 358, § 2; Laws 2006, Ch. 294, § 1; Laws 2007, Ch. 71, § 2; Laws 2009, Ch. 27, § 1; Laws 2010, Ch. 88, § 1; Laws 2018, Ch. 229, § 2.



Notes of Decisions (83)

A. R. S. § 38-431.01, AZ ST § 38-431.01

Current through legislation effective May 10, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

Decision No. 78040

KeyCite Yellow Flag - Negative Treatment  
Proposed Legislation

Arizona Revised Statutes Annotated  
Title 38. Public Officers and Employees (Refs & Annos)  
Chapter 3. Conduct of Office  
Article 3.1. Public Meetings and Proceedings (Refs & Annos)

A.R.S. § 38-431.02

§ 38-431.02. Notice of meetings

Effective: July 29, 2010  
Currentness

A. Public notice of all meetings of public bodies shall be given as follows:

1. The public bodies of this state, including governing bodies of charter schools, shall:

(a) Conspicuously post a statement on their website stating where all public notices of their meetings will be posted, including the physical and electronic locations, and shall give additional public notice as is reasonable and practicable as to all meetings.

(b) Post all public meeting notices on their website and give additional public notice as is reasonable and practicable as to all meetings. A technological problem or failure that either prevents the posting of public notices on a website or that temporarily or permanently prevents the use of all or part of the website does not preclude the holding of the meeting for which the notice was posted if the public body complies with all other public notice requirements required by this section.

2. The public bodies of the counties and school districts shall:

(a) Conspicuously post a statement on their website stating where all public notices of their meetings will be posted, including the physical and electronic locations, and shall give additional public notice as is reasonable and practicable as to all meetings.

(b) Post all public meeting notices on their website and give additional public notice as is reasonable and practicable as to all meetings. A technological problem or failure that either prevents the posting of public notices on a website or that temporarily or permanently prevents the use of all or part of the website does not preclude the holding of the meeting for which the notice was posted if the public body complies with all other public notice requirements required by this section.

3. Special districts that are formed pursuant to title 48:<sup>1</sup>

Decision No. 78040

(a) May conspicuously post a statement on their website stating where all public notices of their meetings will be posted, including the physical and electronic locations, and shall give additional public notice as is reasonable and practicable as to all meetings.

(b) May post all public meeting notices on their website and shall give additional public notice as is reasonable and practicable as to all meetings. A technological problem or failure that either prevents the posting of public notices on a website or that temporarily or permanently prevents the use of all or part of the website does not preclude the holding of the meeting for which the notice was posted if the public body complies with all other public notice requirements required by this section.

(c) If a statement or notice is not posted pursuant to subdivision (a) or (b) of this paragraph, shall file a statement with the clerk of the board of supervisors stating where all public notices of their meetings will be posted and shall give additional public notice as is reasonable and practicable as to all meetings.

4. The public bodies of the cities and towns shall:

(a) Conspicuously post a statement on their website or on a website of an association of cities and towns stating where all public notices of their meetings will be posted, including the physical and electronic locations, and shall give additional public notice as is reasonable and practicable as to all meetings.

(b) Post all public meeting notices on their website or on a website of an association of cities and towns and give additional public notice as is reasonable and practicable as to all meetings. A technological problem or failure that either prevents the posting of public notices on a website or that temporarily or permanently prevents the use of all or part of the website does not preclude the holding of the meeting for which the notice was posted if the public body complies with all other public notice requirements required by this section.

**B.** If an executive session is scheduled, a notice of the executive session shall state the provision of law authorizing the executive session, and the notice shall be provided to the:

1. Members of the public body.

2. General public.

**C.** Except as provided in subsections D and E of this section, meetings shall not be held without at least twenty-four hours' notice to the members of the public body and to the general public. The twenty-four hour period includes Saturdays if the public has access to the physical posted location in addition to any website posting, but excludes Sundays and other holidays prescribed in § 1-301.

**D.** In case of an actual emergency, a meeting, including an executive session, may be held on such notice as is appropriate to the circumstances. If this subsection is utilized for conduct of an emergency session or the consideration of an emergency measure at a previously scheduled meeting the public body must post a public notice within twenty-four hours declaring that an emergency session has been held and setting forth the information required in subsections H and I of this section.

**E.** A meeting may be recessed and resumed with less than twenty-four hours' notice if public notice of the initial session of the meeting is given as required in subsection A of this section, and if, before recessing, notice is publicly given as to the time and place of the resumption of the meeting or the method by which notice shall be publicly given.

**F.** A public body that intends to meet for a specified calendar period, on a regular day, date or event during the calendar period, and at a regular place and time, may post public notice of the meetings at the beginning of the period. The notice shall specify the period for which notice is applicable.

**G.** Notice required under this section shall include an agenda of the matters to be discussed or decided at the meeting or information on how the public may obtain a copy of such an agenda. The agenda must be available to the public at least twenty-four hours before the meeting, except in the case of an actual emergency under subsection D of this section. The twenty-four hour period includes Saturdays if the public has access to the physical posted location in addition to any website posting, but excludes Sundays and other holidays prescribed in § 1-301.

**H.** Agendas required under this section shall list the specific matters to be discussed, considered or decided at the meeting. The public body may discuss, consider or make decisions only on matters listed on the agenda and other matters related thereto.

**I.** Notwithstanding the other provisions of this section, notice of executive sessions shall be required to include only a general description of the matters to be considered. The agenda shall provide more than just a recital of the statutory provisions authorizing the executive session, but need not contain information that would defeat the purpose of the executive session, compromise the legitimate privacy interests of a public officer, appointee or employee or compromise the attorney-client privilege.

**J.** Notwithstanding subsections H and I of this section, in the case of an actual emergency a matter may be discussed and considered and, at public meetings, decided, if the matter was not listed on the agenda and a statement setting forth the reasons necessitating the discussion, consideration or decision is placed in the minutes of the meeting and is publicly announced at the public meeting. In the case of an executive session, the reason for consideration of the emergency measure shall be announced publicly immediately before the executive session.

**K.** Notwithstanding subsection H of this section, the chief administrator, presiding officer or a member of a public body may present a brief summary of current events without listing in the agenda the specific matters to be summarized, if:

1. The summary is listed on the agenda.
2. The public body does not propose, discuss, deliberate or take legal action at that meeting on any matter in the summary unless the specific matter is properly noticed for legal action.

#### **Credits**

Added by Laws 1974, Ch. 196, § 4, eff. May 22, 1974. Amended by Laws 1978, Ch. 86, § 3; Laws 1982, Ch. 278, § 3; Laws 2000, Ch. 358, § 3; Laws 2002, Ch. 247, § 1; Laws 2006, Ch. 294, § 2; Laws 2009, Ch. 27, § 2; Laws 2010, Ch. 88, § 2.

Notes of Decisions (26)

Footnotes

1 Section 48-101 et seq.

A. R. S. § 38-431.02, AZ ST § 38-431.02

Current through legislation effective May 10, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

KeyCite Yellow Flag - Negative Treatment  
Proposed Legislation

Arizona Revised Statutes Annotated  
Title 38. Public Officers and Employees (Refs & Annos)  
Chapter 3. Conduct of Office  
Article 3.1. Public Meetings and Proceedings (Refs & Annos)

A.R.S. § 38-431.03

§ 38-431.03. Executive sessions; definitions

Effective: August 25, 2020  
Currentness

A. On a public majority vote of the members constituting a quorum, a public body may hold an executive session but only for the following purposes:

1. Discussion or consideration of employment, assignment, appointment, promotion, demotion, dismissal, salaries, disciplining or resignation of a public officer, appointee or employee of any public body, except that, with the exception of salary discussions, an officer, appointee or employee may demand that the discussion or consideration occur at a public meeting. The public body shall provide the officer, appointee or employee with written notice of the executive session as is appropriate but not less than twenty-four hours for the officer, appointee or employee to determine whether the discussion or consideration should occur at a public meeting.
2. Discussion or consideration of records exempt by law from public inspection, including the receipt and discussion of information or testimony that is specifically required to be maintained as confidential by state or federal law.
3. Discussion or consultation for legal advice with the attorney or attorneys of the public body.
4. Discussion or consultation with the attorneys of the public body in order to consider its position and instruct its attorneys regarding the public body's position regarding contracts that are the subject of negotiations, in pending or contemplated litigation or in settlement discussions conducted in order to avoid or resolve litigation.
5. Discussions or consultations with designated representatives of the public body in order to consider its position and instruct its representatives regarding negotiations with employee organizations regarding the salaries, salary schedules or compensation paid in the form of fringe benefits of employees of the public body.
6. Discussion, consultation or consideration for international and interstate negotiations or for negotiations by a city or town, or its designated representatives, with members of a tribal council, or its designated representatives, of an Indian reservation located within or adjacent to the city or town.

Decision No. 78040



7. Discussions or consultations with designated representatives of the public body in order to consider its position and instruct its representatives regarding negotiations for the purchase, sale or lease of real property.

8. Discussion or consideration of matters relating to school safety operations or school safety plans or programs.

9. Discussions or consultations with designated representatives of the public body in order to discuss security plans, procedures, assessments, measures or systems relating to, or having an impact on, the security or safety of buildings, facilities, operations, critical infrastructure information and information technology maintained by the public body. Records, documentation, notes, or other materials made by, or provided to, the representatives pursuant to this paragraph are confidential and exempt from public disclosure under this chapter and title 39, chapter 1.<sup>1</sup>

**B.** Minutes of and discussions made at executive sessions shall be kept confidential except from:

1. Members of the public body that met in executive session.

2. Officers, appointees or employees who were the subject of discussion or consideration pursuant to subsection A, paragraph 1 of this section.

3. The auditor general on a request made in connection with an audit authorized as provided by law.

4. A county attorney or the attorney general when investigating alleged violations of this article.

**C.** The public body shall instruct persons who are present at the executive session regarding the confidentiality requirements of this article.

**D.** Legal action involving a final vote or decision shall not be taken at an executive session, except that the public body may instruct its attorneys or representatives as provided in subsection A, paragraphs 4, 5 and 7 of this section. A public vote shall be taken before any legal action binds the public body.

**E.** Except as provided in section 38-431.02, subsections I and J, a public body shall not discuss any matter in an executive session that is not described in the notice of the executive session.

**F.** Disclosure of executive session information pursuant to this section or section 38-431.06 does not constitute a waiver of any privilege, including the attorney-client privilege. Any person receiving executive session information pursuant to this section or § 38-431.06 shall not disclose that information except to the attorney general or county attorney, by agreement with the public body or to a court in camera for purposes of enforcing this article. Any court that reviews executive session information shall take appropriate action to protect privileged information.

**G.** For the purposes of this section:

1. "Critical infrastructure" has the same meaning prescribed in § 41-1801.

2. "Information technology" has the same meaning prescribed in § 18-101.

#### Credits

Added by Laws 1974, Ch. 196, § 6, eff. May 22, 1974. Amended by Laws 1978, Ch. 86, § 4; Laws 1982, Ch. 278, § 4; Laws 1983, Ch. 274, § 2, eff. April 27, 1983; Laws 1990, Ch. 56, § 1, eff. April 12, 1990; Laws 2000, Ch. 358, § 4; Laws 2020, Ch. 59, § 1, eff. June 5, 2020; Laws 2020, Ch. 63, § 1.

Notes of Decisions (54)

#### Footnotes

1 Section 38-101 et seq.

A. R. S. § 38-431.03, AZ ST § 38-431.03

Current through legislation effective May 10, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

Arizona Revised Statutes Annotated

Title 38. Public Officers and Employees (Refs & Annos)

Chapter 3. Conduct of Office

Article 3.1. Public Meetings and Proceedings (Refs & Annos)

A.R.S. § 38-431.04

## § 38-431.04. Writ of mandamus

Currentness

Where the provisions of this article are not complied with, a court of competent jurisdiction may issue a writ of mandamus requiring that a meeting be open to the public.

### Credits

Added as § 38-431.03 by Laws 1962, Ch. 138, § 2. Renumbered as § 38-431.04 by Laws 1974, Ch. 196, § 6, eff. May 22, 1974.

Notes of Decisions (4)

A. R. S. § 38-431.04, AZ ST § 38-431.04

Current through legislation effective May 10, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

Decision No. 78040

Arizona Revised Statutes Annotated  
Title 38. Public Officers and Employees (Refs & Annos)  
Chapter 3. Conduct of Office  
Article 3.1. Public Meetings and Proceedings (Refs & Annos)

A.R.S. § 38-431.05

§ 38-431.05. Meeting held in violation of article;  
business transacted null and void; ratification

Currentness

**A.** All legal action transacted by any public body during a meeting held in violation of any provision of this article is null and void except as provided in subsection B.

**B.** A public body may ratify legal action taken in violation of this article in accordance with the following requirements:

1. Ratification shall take place at a public meeting within thirty days after discovery of the violation or after such discovery should have been made by the exercise of reasonable diligence.

2. The notice for the meeting shall include a description of the action to be ratified, a clear statement that the public body proposes to ratify a prior action and information on how the public may obtain a detailed written description of the action to be ratified.

3. The public body shall make available to the public a detailed written description of the action to be ratified and all deliberations, consultations and decisions by members of the public body that preceded and related to such action. The written description shall also be included as part of the minutes of the meeting at which ratification is taken.

4. The public body shall make available to the public the notice and detailed written description required by this section at least seventy-two hours in advance of the public meeting at which the ratification is taken.

**Credits**

Added as § 38-431.04 by Laws 1962, Ch. 138, § 2. Renumbered as § 38-431.05 by Laws 1974, Ch. 196, § 6, eff. May 22, 1974. Amended by Laws 1978, Ch. 86, § 5; Laws 1982, Ch. 278, § 5.

Notes of Decisions (18)

A. R. S. § 38-431.05, AZ ST § 38-431.05

Current through legislation effective May 10, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

Arizona Revised Statutes Annotated

Title 38. Public Officers and Employees (Refs & Annos)

Chapter 3. Conduct of Office

Article 3.1. Public Meetings and Proceedings (Refs & Annos)

A.R.S. § 38-431.06

## § 38-431.06. Investigations; written investigative demands

### Currentness

**A.** On receipt of a written complaint signed by a complainant alleging a violation of this article or on their own initiative, the attorney general or the county attorney for the county in which the alleged violation occurred may begin an investigation.

**B.** In addition to other powers conferred by this article, in order to carry out the duties prescribed in this article, the attorney general or the county attorney for the county in which the alleged violation occurred, or their designees, may:

1. Issue written investigative demands to any person.
2. Administer an oath or affirmation to any person for testimony.
3. Examine under oath any person in connection with the investigation of the alleged violation of this article.
4. Examine by means of inspecting, studying or copying any account, book, computer, document, minutes, paper, recording or record.
5. Require any person to file on prescribed forms a statement or report in writing and under oath of all the facts and circumstances requested by the attorney general or county attorney.

**C.** The written investigative demand shall:

1. Be served on the person in the manner required for service of process in this state or by certified mail, return receipt requested.
2. Describe the class or classes of documents or objects with sufficient definiteness to permit them to be fairly identified.
3. Prescribe a reasonable time at which the person shall appear to testify and within which the document or object shall be produced and advise the person that objections to or reasons for not complying with the demand may be filed with the attorney general or county attorney on or before that time.

Decision No. 78040

4. Specify a place for the taking of testimony or for production of a document or object and designate a person who shall be the custodian of the document or object.

**D.** If a person objects to or otherwise fails to comply with the written investigation demand served on the person pursuant to subsection C, the attorney general or county attorney may file an action in the superior court for an order to enforce the demand. Venue for the action to enforce the demand shall be in Maricopa county or in the county in which the alleged violation occurred. Notice of hearing the action to enforce the demand and a copy of the action shall be served on the person in the same manner as that prescribed in the Arizona rules of civil procedure. If a court finds that the demand is proper, including that the compliance will not violate a privilege and that there is not a conflict of interest on the part of the attorney general or county attorney, that there is reasonable cause to believe there may have been a violation of this article and that the information sought or document or object demanded is relevant to the violation, the court shall order the person to comply with the demand, subject to modifications the court may prescribe. If the person fails to comply with the court's order, the court may issue any of the following orders until the person complies with the order:

1. Adjudging the person in contempt of court.
2. Granting injunctive relief against the person to whom the demand is issued to restrain the conduct that is the subject of the investigation.
3. Granting other relief the court deems proper.

#### **Credits**

Added by Laws 2000, Ch. 358, § 5.

#### Notes of Decisions (2)

A. R. S. § 38-431.06, AZ ST § 38-431.06

Current through legislation effective May 10, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).



Arizona Revised Statutes Annotated  
Title 38. Public Officers and Employees (Refs & Annos)  
Chapter 3. Conduct of Office  
Article 3.1. Public Meetings and Proceedings (Refs & Annos)

A.R.S. § 38-431.07

§ 38-431.07. Violations; enforcement; civil penalty; removal from office; in camera review

Effective: August 3, 2018  
Currentness

**A.** Any person affected by an alleged violation of this article, the attorney general or the county attorney for the county in which an alleged violation of this article occurred may commence a suit in the superior court in the county in which the public body ordinarily meets, for the purpose of requiring compliance with, or the prevention of violations of, this article, by the public body as a whole, or to determine the applicability of this article to matters or legal actions of the public body. The attorney general may also commence a suit in the superior court in the county in which the public body ordinarily meets against an individual member of a public body for a knowing violation of this article, and in such a suit the court may impose a civil penalty against each person who knowingly violates this article or who knowingly aids, agrees to aid or attempts to aid in violating this article and order equitable relief as the court deems appropriate in the circumstances. The court may impose a civil penalty not to exceed five hundred dollars for the second offense and not to exceed two thousand five hundred dollars for the third and subsequent offenses. If the court imposes a civil penalty against an individual member of the public body who knowingly violates this article, the public body may not pay the civil penalty on behalf of, or otherwise reimburse, the individual against whom the civil penalty has been imposed. If the court finds that a person who might otherwise be liable under this subsection objected to the action of the public body and the objection is noted on a public record, the court may choose not to impose a civil penalty on that person. The civil penalties awarded pursuant to this section shall be deposited into the general fund of the public body concerned. The court may also order payment to a successful plaintiff in a suit brought under this section of the plaintiff's reasonable attorney fees, by the defendant state, the political subdivision of the state or the incorporated city or town of which the public body is a part or to which it reports. If the court determines that a public officer with intent to deprive the public of information knowingly violated any provision of this article, the court may remove the public officer from office and shall assess the public officer or a person who knowingly aided, agreed to aid or attempted to aid the public officer in violating this article, or both, with all of the costs and attorney fees awarded to the plaintiff pursuant to this section.

**B.** A public body shall not expend public monies to employ or retain legal counsel to provide legal services or representation to the public body or any of its officers in any legal action commenced pursuant to any provisions of this article, unless the public body has authority to make the expenditure pursuant to other provisions of law and takes a legal action at a properly noticed open meeting approving the expenditure before incurring any obligation or indebtedness.

**C.** In any action brought pursuant to this section challenging the validity of an executive session, the court may review in camera the minutes of the executive session, and if the court in its discretion determines that the minutes are relevant and that justice so demands, the court may disclose to the parties or admit in evidence part or all of the minutes.

**Credits**

Added by Laws 1974, Ch. 196, § 7, eff. May 22, 1974. Amended by Laws 1978, Ch. 86, § 6; Laws 1982, Ch. 278, § 7; Laws 2000, Ch. 358, § 6; Laws 2018, Ch. 229, § 3.

Decision No. 78040

Notes of Decisions (15)

A. R. S. § 38-431.07, AZ ST § 38-431.07

Current through legislation effective May 10, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

Decision No. 78040

Arizona Revised Statutes Annotated  
Title 38. Public Officers and Employees (Refs & Annos)  
Chapter 3. Conduct of Office  
Article 3.1. Public Meetings and Proceedings (Refs & Annos)

A.R.S. § 38-431.08

§ 38-431.08. Exceptions; limitation

Effective: August 2, 2012

Currentness

**A.** This article does not apply to:

1. Any judicial proceeding of any court or any political caucus of the legislature.
2. Any conference committee of the legislature, except that all such meetings shall be open to the public.
3. The commissions on appellate and trial court appointments and the commission on judicial qualifications.
4. Good cause exception and central registry exception determinations and hearings conducted by the board of fingerprinting pursuant to §§ 41-619.55 and 41-619.57.

**B.** A hearing held within a prison facility by the board of executive clemency is subject to this article, except that the director of the state department of corrections may:

1. Prohibit, on written findings that are made public within five days of so finding, any person from attending a hearing whose attendance would constitute a serious threat to the life or physical safety of any person or to the safe, secure and orderly operation of the prison.
2. Require a person who attends a hearing to sign an attendance log. If the person is over sixteen years of age, the person shall produce photographic identification that verifies the person's signature.
3. Prevent and prohibit any articles from being taken into a hearing except recording devices and, if the person who attends a hearing is a member of the media, cameras.
4. Require that a person who attends a hearing submit to a reasonable search on entering the facility.

Decision No. 78040

C. The exclusive remedies available to any person who is denied attendance at or removed from a hearing by the director of the state department of corrections in violation of this section shall be those remedies available in § 38-431.07, as against the director only.

D. Either house of the legislature may adopt a rule or procedure pursuant to article IV, part 2, section 8, Constitution of Arizona, to provide an exemption to the notice and agenda requirements of this article or to allow standing or conference committees to meet through technological devices rather than only in person.

**Credits**

Added by Laws 1974, Ch. 196, § 7, eff. May 22, 1974. Amended by Laws 1975, Ch. 71, § 1, eff. May 20, 1975; Laws 1977, Ch. 128, § 1; Laws 1982, Ch. 278, § 8; Laws 1990, Ch. 298, § 1, eff. June 16, 1990; Laws 1998, Ch. 232, § 8; Laws 1998, Ch. 270, § 12, eff. August 17, 1999; Laws 1999, Ch. 211, § 33; Laws 2000, Ch. 251, § 14; Laws 2000, Ch. 358, § 7; Laws 2012, Ch. 188, § 3.

**Notes of Decisions (8)**

A. R. S. § 38-431.08, AZ ST § 38-431.08

Current through legislation effective May 10, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

Arizona Revised Statutes Annotated  
Title 38. Public Officers and Employees (Refs & Annos)  
Chapter 3. Conduct of Office  
Article 3.1. Public Meetings and Proceedings (Refs & Annos)

A.R.S. § 38-431.09

§ 38-431.09. Declaration of public policy

Effective: September 26, 2008

Currentness

**A.** It is the public policy of this state that meetings of public bodies be conducted openly and that notices and agendas be provided for such meetings which contain such information as is reasonably necessary to inform the public of the matters to be discussed or decided. Toward this end, any person or entity charged with the interpretations of this article shall construe this article in favor of open and public meetings.

**B.** Notwithstanding subsection A, it is not a violation of this article if a member of a public body expresses an opinion or discusses an issue with the public either at a venue other than at a meeting that is subject to this article, personally, through the media or other form of public broadcast communication or through technological means if:

1. The opinion or discussion is not principally directed at or directly given to another member of the public body.
2. There is no concerted plan to engage in collective deliberation to take legal action.

**Credits**

Added by Laws 1978, Ch. 86, § 7. Amended by Laws 1982, Ch. 278, § 9; Laws 2000, Ch. 358, § 8; Laws 2008, Ch. 135, § 1.

**Notes of Decisions (5)**

A. R. S. § 38-431.09, AZ ST § 38-431.09

Current through legislation effective May 10, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

Arizona Revised Statutes Annotated  
Title 38. Public Officers and Employees (Refs & Annos)  
Chapter 3. Conduct of Office  
Article 4. Official Acts (Refs & Annos)

A.R.S. § 38-441

§ 38-441. Discharge of duties of another office; attestation

Currentness

When an officer discharges ex officio the duties of another office, his official signature and the attestation shall be in the name of the office which he discharges.

A. R. S. § 38-441, AZ ST § 38-441

Current through legislation effective May 10, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

Decision No. 78040



Arizona Revised Statutes Annotated  
Title 38. Public Officers and Employees (Refs & Annos)  
Chapter 3. Conduct of Office  
Article 4. Official Acts (Refs & Annos)

A.R.S. § 38-442

§ 38-442. Persons acting as public officers without qualifying; classification; effect of acts

Currentness

**A.** A person who exercises a function of a public office without taking the oath of office, or without giving the required bond, is guilty of a class 2 misdemeanor.

**B.** This section shall not affect the validity of acts done by a person exercising the functions of a public office in fact, where persons other than himself are interested in maintaining the validity of such acts.

**Credits**

Amended by Laws 1978, Ch. 201, § 678, eff. Oct. 1, 1978.

Notes of Decisions (3)

A. R. S. § 38-442, AZ ST § 38-442

Current through legislation effective May 10, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

Arizona Revised Statutes Annotated  
Title 38. Public Officers and Employees (Refs & Annos)  
Chapter 3. Conduct of Office  
Article 4. Official Acts (Refs & Annos)

A.R.S. § 38-443

## § 38-443. Nonfeasance in public office; classification

Currentness

A public officer or person holding a position of public trust or employment who knowingly omits to perform any duty the performance of which is required of him by law is guilty of a class 2 misdemeanor unless special provision has been made for punishment of such omission.

### Credits

Amended by Laws 1978, Ch. 201, § 679, eff. Oct. 1, 1978.

### Notes of Decisions (4)

A. R. S. § 38-443, AZ ST § 38-443

Current through legislation effective May 10, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

Decision No. 78040

Arizona Revised Statutes Annotated  
Title 38. Public Officers and Employees (Refs & Annos)  
Chapter 3. Conduct of Office  
Article 4. Official Acts (Refs & Annos)

A.R.S. § 38-444

§ 38-444. Asking or receiving illegal gratuity or reward; classification

Currentness

A public officer who knowingly asks or receives any emolument, gratuity or reward, or any promise thereof, excepting those authorized by law, for doing any official act, is guilty of a class 6 felony.

**Credits**

Amended by Laws 1978, Ch. 201, § 680, eff. Oct. 1, 1978.

Notes of Decisions (1)

A. R. S. § 38-444, AZ ST § 38-444

Current through legislation effective May 10, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

Arizona Revised Statutes Annotated  
Title 38. Public Officers and Employees (Refs & Annos)  
Chapter 3. Conduct of Office  
Article 4. Official Acts (Refs & Annos)

A.R.S. § 38-445

§ 38-445. Using pass or obtaining special rates for transportation; classification; exception

## Currentness

A public officer, except a notary public or a member of the national guard of Arizona traveling under orders, who knowingly accepts or uses a pass or purchases transportation from a common carrier, other than as such transportation may be purchased by the general public, is guilty of a class 2 misdemeanor.

## Credits

Amended by Laws 1978, Ch. 201, § 681, eff. Oct. 1, 1978.

A. R. S. § 38-445, AZ ST § 38-445

Current through legislation effective May 10, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

Arizona Revised Statutes Annotated  
Title 38. Public Officers and Employees (Refs & Annos)  
Chapter 3. Conduct of Office  
Article 4. Official Acts (Refs & Annos)

A.R.S. § 38-446

§ 38-446. Acts based on written opinions; immunity

Effective: September 21, 2006

Currentness

Notwithstanding any provision of law to the contrary, no public officer or employee is personally liable for acts done in his official capacity in good faith reliance on written opinions of the attorney general issued pursuant to § 41-193, written opinions of a county attorney of the county, written opinions of the city or town attorney of the city or town or written opinions of any authorized private attorney for any independent public retirement trust fund or system for which the officer or employee serves or is employed.

**Credits**

Added by Laws 1987, Ch. 288, § 1. Amended by Laws 2006, Ch. 264, § 1.

A. R. S. § 38-446, AZ ST § 38-446

Current through legislation effective May 10, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

Decision No. 78040

Arizona Revised Statutes Annotated  
Title 38. Public Officers and Employees (Refs & Annos)  
Chapter 3. Conduct of Office  
Article 4. Official Acts (Refs & Annos)

A.R.S. § 38-447

§ 38-447. Violation of prohibition against acquisition  
of certain interests by public officers; classification

Currentness

An officer or person prohibited by the laws of this state from making or being interested in contracts, or from becoming a vendor or purchaser at sales, or from purchasing evidences of indebtedness, who violates any provision of such laws, is guilty of a class 5 felony, and is forever disqualified from holding any office in this state.

**Credits**

Amended by Laws 1978, Ch. 201, § 682, eff. Oct. 1, 1978.

Notes of Decisions (5)

A. R. S. § 38-447, AZ ST § 38-447

Current through legislation effective May 10, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

Decision No. 78040



Arizona Revised Statutes Annotated

Title 38. Public Officers and Employees (Refs & Annos)

Chapter 3. Conduct of Office

Article 4. Official Acts (Refs & Annos)

A.R.S. § 38-448

**§ 38-448. State employees; access to internet  
pornography prohibited; cause for dismissal; definitions**

Effective: September 29, 2012

Currentness

**A.** Except to the extent required in conjunction with a bona fide, agency approved research project or other agency approved undertaking, an employee of an agency shall not knowingly use agency owned or agency leased computer equipment to access, download, print or store any information infrastructure files or services that depict nudity, sexual activity, sexual excitement or ultimate sexual acts as defined in § 13-3501. Agency heads shall give, in writing, any agency approvals. Agency approvals are available for public inspection pursuant to § 39-121.

**B.** An employee who violates this section may be subject to discipline or dismissal.

**C.** All agencies shall immediately furnish their current employees with copies of this section. All agencies shall furnish all new employees with copies of this section at the time of authorizing an employee to use an agency computer.

**D.** For the purposes of this section:

1. "Agency" means:

(a) All offices, agencies, departments, boards, councils or commissions of this state.

(b) All state universities.

(c) All community college districts.

(d) All legislative agencies.

(e) All departments or agencies of the state supreme court or the court of appeals.

2. "Information infrastructure" means telecommunications, cable and computer networks and includes the internet, the world wide web, usenet, bulletin board systems, on-line systems and telephone networks.

**Credits**

Added by Laws 2003, Ch. 80, § 1. Amended by Laws 2012, Ch. 321, § 90, eff. Sept. 29, 2012.

A. R. S. § 38-448, AZ ST § 38-448

Current through legislation effective May 10, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

Decision No. 78040

Arizona Revised Statutes Annotated  
Title 38. Public Officers and Employees (Refs & Annos)  
Chapter 3. Conduct of Office  
Article 4. Official Acts (Refs & Annos)

A.R.S. § 38-449

§ 38-449. Display of POW/MIA flag

Effective: August 27, 2019

Currentness

**A.** The POW/MIA flag shall be displayed on or in front of the locations prescribed in subsection B of this section on any day when the United States flag is displayed.

**B.** The locations for the display of the POW/MIA flag pursuant to subsection A of this section are the following:

1. The state capitol building.
2. The building that serves as the location of the superior court in a county.
3. The building that serves as the city or town hall of each incorporated city or town.
4. The building that serves as the main administrative building of each county.

**C.** The POW/MIA flag may be displayed on or in front of the following locations on any day when the United States flag is displayed:

1. The building that serves as the location of the municipal court in a city or town.
2. The building that serves as the location of the justice court.
3. The building that serves as the regional justice court center.

**D.** Notwithstanding any other law, when displayed with the United States flag on a single staff the POW/MIA flag shall be displayed below the Arizona state flag. When flags are displayed on multiple staffs the Arizona flag shall always be displayed to the honor of the United States flag.

Decision No. 78040

**Credits**

Added by Laws 2010, Ch. 217, § 1. Amended by Laws 2019, Ch. 23, § 1.

A. R. S. § 38-449, AZ ST § 38-449

Current through legislation effective May 10, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

Arizona Revised Statutes Annotated  
Title 38. Public Officers and Employees (Refs & Annos)  
Chapter 3. Conduct of Office  
Article 4. Official Acts (Refs & Annos)

A.R.S. § 38-450

§ 38-450. Display of honor and remember flag

Effective: August 2, 2012

Currentness

A. The honor and remember flag shall be displayed on or in front of the locations prescribed in subsection B of this section on any day when the United States flag is flown at half-staff because of the death of a member of the United States armed forces.

B. The locations for the display of the honor and remember flag pursuant to subsection A of this section are the following:

1. The state capitol building.
2. The building that serves as the location of the superior court in a county.
3. The building that serves as the city or town hall of each incorporated city or town.

C. Notwithstanding any other law, when displayed with the United States flag on a single staff the honor and remember flag shall be displayed below the POW/MIA flag.

**Credits**

Added by Laws 2012, Ch. 111, § 1.

A. R. S. § 38-450, AZ ST § 38-450

Current through legislation effective May 10, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

Arizona Revised Statutes Annotated

Title 38. Public Officers and Employees (Refs & Annos)

Chapter 3. Conduct of Office

Article 8. Conflict of Interest of Officers and Employees (Refs & Annos)

A.R.S. § 38-501

## § 38-501. Application of article

Currentness

**A.** This article shall apply to all public officers and employees of incorporated cities or towns, of political subdivisions and of the state and any of its departments, commissions, agencies, bodies or boards.

**B.** Notwithstanding the provisions of any other law, or the provisions of any charter or ordinance of any incorporated city or town to the contrary, the provisions of this article shall be exclusively applicable to all officers and employees of every incorporated city or town or political subdivision or the state and any of its departments, commissions, agencies, bodies or boards and shall supersede the provisions of any other such law, charter provision or ordinance.

**C.** Other prohibitions in the state statutes against any specific conflict of interests shall be in addition to this article if consistent with the intent and provisions of this article.

### Credits

Added by Laws 1968, Ch. 88, § 1. Amended by Laws 1978, Ch. 208, § 1, eff. Oct. 1, 1978; Laws 1992, Ch. 140, § 1.

Notes of Decisions (9)

A. R. S. § 38-501, AZ ST § 38-501

Current through legislation effective May 10, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works

Decision No. 78040



Arizona Revised Statutes Annotated  
Title 38. Public Officers and Employees (Refs & Annos)  
Chapter 3. Conduct of Office  
Article 8. Conflict of Interest of Officers and Employees (Refs & Annos)

A.R.S. § 38-502

§ 38-502. Definitions

Effective: August 6, 2016

Currentness

In this article, unless the context otherwise requires:

1. "Compensation" means money, a tangible thing of value or a financial benefit.
2. "Employee" means all persons who are not public officers and who are employed on a full-time, part-time or contract basis by an incorporated city or town, a political subdivision or the state or any of its departments, commissions, agencies, bodies or boards for remuneration.
3. "Make known" means the filing of a paper which is signed by a public officer or employee and which fully discloses a substantial interest or the filing of a copy of the official minutes of a public agency which fully discloses a substantial interest. The filing shall be in the special file established pursuant to § 38-509.
4. "Official records" means the minutes or papers, records and documents maintained by a public agency for the specific purpose of receiving disclosures of substantial interests required to be made known by this article.
5. "Political subdivision" means all political subdivisions of the state and county, including all school districts.
6. "Public agency" means:
  - (a) All courts.
  - (b) Any department, agency, board, commission, institution, instrumentality or legislative or administrative body of the state, a county, an incorporated town or city and any other political subdivision.
  - (c) The state, county and incorporated cities or towns and any other political subdivisions.

Decision No. 78040

7. "Public competitive bidding" means the method of purchasing prescribed by title 41, chapter 23,<sup>1</sup> or procedures substantially equivalent to such method of purchasing, or as provided by local charter or ordinance.

8. "Public officer" means all elected and appointed officers of a public agency established by charter, ordinance, resolution, state constitution or statute.

9. "Relative" means the spouse, child, child's child, parent, grandparent, brother or sister of the whole or half blood and their spouses and the parent, brother, sister or child of a spouse.

10. "Remote interest" means:

(a) That of a nonsalaried officer of a nonprofit corporation.

(b) That of a landlord or tenant of the contracting party.

(c) That of an attorney of a contracting party.

(d) That of a member of a nonprofit cooperative marketing association.

(e) The ownership of less than three percent of the shares of a corporation for profit, provided the total annual income from dividends, including the value of stock dividends, from the corporation does not exceed five percent of the total annual income of such officer or employee and any other payments made to him by the corporation do not exceed five percent of his total annual income.

(f) That of a public officer or employee in being reimbursed for his actual and necessary expenses incurred in the performance of official duty.

(g) That of a recipient of public services generally provided by the incorporated city or town, political subdivision or state department, commission, agency, body or board of which he is a public officer or employee, on the same terms and conditions as if he were not an officer or employee.

(h) That of a public school board member when the relative involved is not a dependent, as defined in § 43-1001, or a spouse.

(i) That of a public officer or employee, or that of a relative of a public officer or employee, unless the contract or decision involved would confer a direct economic benefit or detriment on the officer, the employee or his relative, of any of the following:

(i) Another political subdivision.

(ii) A public agency of another political subdivision.

(iii) A public agency except if it is the same governmental entity.

(j) That of a member of a trade, business, occupation, profession or class of persons consisting of at least ten members which is no greater than the interest of the other members of that trade, business, occupation, profession or class of persons.

(k) That of a relative who is an employee of any business entity or governmental entity that employs at least twenty-five employees within this state and who, in the capacity as an employee, does not assert control or decision-making authority over the entity's management or budget decisions.

(l) The ownership of any publicly traded investments that are held in an account or fund, including a mutual fund, that is managed by one or more qualified investment professionals who are not employed or controlled by the officer or employee and that the officer or employee owns shares or interest together with other investors.

11. "Substantial interest" means any nonspeculative pecuniary or proprietary interest, either direct or indirect, other than a remote interest.

#### Credits

Added by Laws 1968, Ch. 88, § 1. Amended by Laws 1973, Ch. 116, § 6; Laws 1974, Ch. 199, § 1; Laws 1977, Ch. 164, § 17; Laws 1978, Ch. 151, § 7; Laws 1978, Ch. 208, § 2, eff. Oct. 1, 1978; Laws 1979, Ch. 145, § 36; Laws 1992, Ch. 140, § 2; Laws 2016, Ch. 289, § 2.

#### Notes of Decisions (9)

#### Footnotes

1 Section 41-2501 et seq.

A. R. S. § 38-502, AZ ST § 38-502

Current through legislation effective May 10, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

Arizona Revised Statutes Annotated  
Title 38. Public Officers and Employees (Refs & Annos)  
Chapter 3. Conduct of Office  
Article 8. Conflict of Interest of Officers and Employees (Refs & Annos)

A.R.S. § 38-503

## § 38-503. Conflict of interest; exemptions; employment prohibition

### Currentness

**A.** Any public officer or employee of a public agency who has, or whose relative has, a substantial interest in any contract, sale, purchase or service to such public agency shall make known that interest in the official records of such public agency and shall refrain from voting upon or otherwise participating in any manner as an officer or employee in such contract, sale or purchase.

**B.** Any public officer or employee who has, or whose relative has, a substantial interest in any decision of a public agency shall make known such interest in the official records of such public agency and shall refrain from participating in any manner as an officer or employee in such decision.

**C.** Notwithstanding the provisions of subsections A and B of this section, no public officer or employee of a public agency shall supply to such public agency any equipment, material, supplies or services, unless pursuant to an award or contract let after public competitive bidding, except that:

1. A school district governing board may purchase, as provided in §§ 15-213 and 15-323, supplies, materials and equipment from a school board member.

2. Political subdivisions other than school districts may purchase through their governing bodies, without using public competitive bidding procedures, supplies, materials and equipment not exceeding three hundred dollars in cost in any single transaction, not to exceed a total of one thousand dollars annually, from a member of the governing body if the policy for such purchases is approved annually.

**D.** Notwithstanding subsections A and B of this section and as provided in §§ 15-421 and 15-1441, the governing board of a school district or a community college district may not employ a person who is a member of the governing board or who is the spouse of a member of the governing board.

### Credits

Added by Laws 1968, Ch. 88, § 1. Amended by Laws 1978, Ch. 208, § 3, eff. Oct. 1, 1978; Laws 1980, Ch. 170, § 3; Laws 1986, Ch. 17, § 3; Laws 1986, Ch. 246, § 1; Laws 1987, Ch. 138, § 2.

Notes of Decisions (78)

Decision No. 78040

A. R. S. § 38-503, AZ ST § 38-503

Current through legislation effective May 10, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## Arizona Revised Statutes Annotated

## Title 38. Public Officers and Employees (Refs &amp; Annos)

## Chapter 3. Conduct of Office

## Article 8. Conflict of Interest of Officers and Employees (Refs &amp; Annos)

## A.R.S. § 38-504

## § 38-504. Prohibited acts

## Currentness

**A.** A public officer or employee shall not represent another person for compensation before a public agency by which the officer or employee is or was employed within the preceding twelve months or on which the officer or employee serves or served within the preceding twelve months concerning any matter with which the officer or employee was directly concerned and in which the officer or employee personally participated during the officer's or employee's employment or service by a substantial and material exercise of administrative discretion.

**B.** During the period of a public officer's or employee's employment or service and for two years thereafter, a public officer or employee shall not disclose or use for the officer's or employee's personal profit, without appropriate authorization, any information acquired by the officer or employee in the course of the officer's or employee's official duties which has been clearly designated to the officer or employee as confidential when such confidential designation is warranted because of the status of the proceedings or the circumstances under which the information was received and preserving its confidentiality is necessary for the proper conduct of government business. A public officer or employee shall not disclose or use, without appropriate authorization, any information that is acquired by the officer or employee in the course of the officer's or employee's official duties and that is declared confidential by law.

**C.** A public officer or employee shall not use or attempt to use the officer's or employee's official position to secure any valuable thing or valuable benefit for the officer or employee that would not ordinarily accrue to the officer or employee in the performance of the officer's or employee's official duties if the thing or benefit is of such character as to manifest a substantial and improper influence on the officer or employee with respect to the officer's or employee's duties.

**Credits**

Added by Laws 1974, Ch. 199, § 3. Amended by Laws 1995, Ch. 76, § 5; Laws 1999, Ch. 40, § 1.

## Notes of Decisions (3)

A. R. S. § 38-504, AZ ST § 38-504

Current through legislation effective May 10, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).



Arizona Revised Statutes Annotated

Title 38. Public Officers and Employees (Refs & Annos)

Chapter 3. Conduct of Office

Article 8. Conflict of Interest of Officers and Employees (Refs & Annos)

A.R.S. § 38-505

## § 38-505. Additional income prohibited for services

Currentness

**A.** No public officer or employee may receive or agree to receive directly or indirectly compensation other than as provided by law for any service rendered or to be rendered by him personally in any case, proceeding, application, or other matter which is pending before the public agency of which he is a public officer or employee.

**B.** This section shall not be construed to prohibit the performance of ministerial functions including, but not limited to, the filing, or amendment of tax returns, applications for permits and licenses, incorporation papers, and other documents.

### Credits

Added by Laws 1974, Ch. 199, § 3.

Notes of Decisions (1)

A. R. S. § 38-505, AZ ST § 38-505

Current through legislation effective May 10, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

Decision No. 78040

Arizona Revised Statutes Annotated

Title 38. Public Officers and Employees (Refs & Annos)

Chapter 3. Conduct of Office

Article 8. Conflict of Interest of Officers and Employees (Refs & Annos)

A.R.S. § 38-506

## § 38-506. Remedies

Currentness

**A.** In addition to any other remedies provided by law, any contract entered into by a public agency in violation of this article is voidable at the instance of the public agency.

**B.** Any person affected by a decision of a public agency may commence a civil suit in the superior court for the purpose of enforcing the civil provisions of this article. The court may order such equitable relief as it deems appropriate in the circumstances including the remedies provided in this section.

**C.** The court may in its discretion order payment of costs, including reasonable attorney's fees, to the prevailing party in an action brought under subsection B.

### Credits

Added by Laws 1978, Ch. 208, § 5, eff. Oct. 1, 1978.

Notes of Decisions (6)

A. R. S. § 38-506, AZ ST § 38-506

Current through legislation effective May 10, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

Decision No. 78040

Arizona Revised Statutes Annotated

Title 38. Public Officers and Employees (Refs & Annos)

Chapter 3. Conduct of Office

Article 8. Conflict of Interest of Officers and Employees (Refs & Annos)

A.R.S. § 38-507

§ 38-507. Opinions of the attorney general, county attorneys,  
city or town attorneys and house and senate ethics committee

Currentness

Requests for opinions from either the attorney general, a county attorney, a city or town attorney, the senate ethics committee or the house of representatives ethics committee concerning violations of this article shall be confidential, but the final opinions shall be a matter of public record. The county attorneys shall file opinions with the county recorder, the city or town attorneys shall file opinions with the city or town clerk, the senate ethics committee shall file opinions with the senate secretary and the house of representatives ethics committee shall file opinions with the chief clerk of the house of representatives.

**Credits**

Added by Laws 1978, Ch. 208, § 5, eff. Oct. 1, 1978. Amended by Laws 1992, Ch. 140, § 3.

A. R. S. § 38-507, AZ ST § 38-507

Current through legislation effective May 10, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

Decision No. 78040

Arizona Revised Statutes Annotated  
Title 38. Public Officers and Employees (Refs & Annos)  
Chapter 3. Conduct of Office  
Article 8. Conflict of Interest of Officers and Employees (Refs & Annos)

A.R.S. § 38-508

§ 38-508. Authority of public officers and employees to act

Currentness

**A.** If the provisions of § 38-503 prevent an appointed public officer or a public employee from acting as required by law in his official capacity, such public officer or employee shall notify his superior authority of the conflicting interest. The superior authority may empower another to act or such authority may act in the capacity of the public officer or employee on the conflicting matter.

**B.** If the provisions of § 38-503 prevent a public agency from acting as required by law in its official capacity, such action shall not be prevented if members of the agency who have apparent conflicts make known their substantial interests in the official records of their public agency.

**Credits**

Added by Laws 1978, Ch. 208, § 5, eff. Oct. 1, 1978.

**Notes of Decisions (1)**

A. R. S. § 38-508, AZ ST § 38-508

Current through legislation effective May 10, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

Arizona Revised Statutes Annotated

Title 38. Public Officers and Employees (Refs & Annos)

Chapter 3. Conduct of Office

Article 8. Conflict of Interest of Officers and Employees (Refs & Annos)

A.R.S. § 38-509

## § 38-509. Filing of disclosures

Currentness

Every political subdivision and public agency subject to this article shall maintain for public inspection in a special file all documents necessary to memorialize all disclosures of substantial interest made known pursuant to this article.

### Credits

Added by Laws 1978, Ch. 208, § 5, eff. Oct. 1, 1978.

A. R. S. § 38-509, AZ ST § 38-509

Current through legislation effective May 10, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

Arizona Revised Statutes Annotated  
 Title 38. Public Officers and Employees (Refs & Annos)  
 Chapter 3. Conduct of Office  
 Article 8. Conflict of Interest of Officers and Employees (Refs & Annos)

A.R.S. § 38-510

## § 38-510. Penalties

Currentness

**A.** A person who:

1. Intentionally or knowingly violates any provision of §§ 38-503 through 38-505 is guilty of a class 6 felony.
2. Recklessly or negligently violates any provision of §§ 38-503 through 38-505 is guilty of a class 1 misdemeanor.

**B.** A person found guilty of an offense described in subsection A of this section shall forfeit his public office or employment if any.

**C.** It is no defense to a prosecution for a violation of §§ 38-503 through 38-505 that the public officer or employee to whom a benefit is offered, conferred or agreed to be conferred was not qualified or authorized to act in the desired way.

**D.** It is a defense to a prosecution for a violation of §§ 38-503 through 38-505 that the interest charged to be substantial was a remote interest.

### Credits

Added by Laws 1978, Ch. 208, § 5, eff. Oct. 1, 1978.

A. R. S. § 38-510, AZ ST § 38-510

Current through legislation effective May 10, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).



Arizona Revised Statutes Annotated

Title 38. Public Officers and Employees (Refs & Annos)

Chapter 3. Conduct of Office

Article 8. Conflict of Interest of Officers and Employees (Refs & Annos)

A.R.S. § 38-511

§ 38-511. Cancellation of political subdivision and state contracts; definition

Currentness

A. The state, its political subdivisions or any department or agency of either may, within three years after its execution, cancel any contract, without penalty or further obligation, made by the state, its political subdivisions, or any of the departments or agencies of either if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the state, its political subdivisions or any of the departments or agencies of either is, at any time while the contract or any extension of the contract is in effect, an employee or agent of any other party to the contract in any capacity or a consultant to any other party of the contract with respect to the subject matter of the contract.

B. Leases of state trust land for terms longer than ten years cancelled under this section shall respect those rights given to mortgagees of the lessee by § 37-289 and other lawful provisions of the lease.

C. The cancellation under this section by the state or its political subdivisions shall be effective when written notice from the governor or the chief executive officer or governing body of the political subdivision is received by all other parties to the contract unless the notice specifies a later time.

D. The cancellation under this section by any department or agency of the state or its political subdivisions shall be effective when written notice from such party is received by all other parties to the contract unless the notice specifies a later time.

E. In addition to the right to cancel a contract as provided in subsection A of this section, the state, its political subdivisions or any department or agency of either may recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the state, its political subdivisions or any department or agency of either from any other party to the contract arising as the result of the contract.

F. Notice of this section shall be included in every contract to which the state, its political subdivisions, or any of the departments or agencies of either is a party.

G. For purposes of this section, "political subdivisions" do not include entities formed or operating under title 48, chapter 11, 12, 13, 17, 18, 19 or 22.<sup>1</sup>

**Credits**

Added as § 38-507 by Laws 1978, Ch. 189, § 1. Renumbered as § 38-511. Amended by Laws 1985, Ch. 155, § 1; Laws 1988, Ch. 169, § 1; Laws 1992, Ch. 45, § 1.

**Notes of Decisions (2)**

**Footnotes**

1 Sections 48-1501 et seq., 48-1701 et seq., 48-1901 et seq., 48-2301 et seq., 48-2601 et seq., 48-2901 et seq., 48-3701 et seq.

A. R. S. § 38-511, AZ ST § 38-511

Current through legislation effective May 10, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

Arizona Revised Statutes Annotated  
Title 38. Public Officers and Employees (Refs & Annos)  
Chapter 3.1. Standards for Financial Disclosure (Refs & Annos)  
Article 1. General Provisions (Refs & Annos)

A.R.S. § 38-541

## § 38-541. Definitions

Effective: January 1, 2017  
Currentness

In this chapter, unless the context otherwise requires:

1. "Business" includes any enterprise, organization, trade, occupation or profession, whether or not operated as a legal entity or for profit, including any business trust, corporation, partnership, joint venture or sole proprietorship.
2. "Compensation" means anything of value or advantage, present or prospective, including the forgiveness of debt.
3. "Controlled business" means any business in which the public officer or any member of his household has an ownership or beneficial interest, individually or combined, amounting to more than a fifty percent interest.
4. "Dependent business" means any business in which the public officer or any member of his household has an ownership or beneficial interest, individually or combined, amounting to more than a ten percent interest, and during the preceding calendar year the business received from a single source more than ten thousand dollars and more than fifty percent of its gross income.
5. "Gift" includes any gratuity, special discount, favor, hospitality, service, economic opportunity, loan or other benefit received without equivalent consideration and not provided to members of the public at large. Gift does not include:
  - (a) Travel-related expenses that are publicly reported pursuant to this article.
  - (b) Political campaign contributions that are publicly reported pursuant to title 16, chapter 6.
6. "Local public officer" means a person holding an elective office of an incorporated city or town, a county or a groundwater replenishment district established under title 48, chapter 27.<sup>1</sup>
7. "Member of household" means a public officer's spouse and any minor child of whom the public officer has legal custody.

8. "Public officer" means a member of the legislature and any judge of the court of appeals or the superior court, or a person holding an elective office the constituency of which embraces the entire geographical limits of this state. Members of Congress are not public officers as defined in this paragraph.

9. "Travel-related expenses" means any costs associated with transportation, food, lodging and registration fees and other expenses directly related to travel to or from a meeting, conference or other event where the public officer is participating in the public officer's official capacity.

#### Credits

Added by Laws 1983, Ch. 328, § 6, eff. Jan. 1, 1984. Amended by Laws 1991, Ch. 211, § 1; Laws 2016, Ch. 196, § 1, eff. Jan. 1, 2017.

#### Notes of Decisions (3)

#### Footnotes

1 Section 48-4401 et seq.

A. R. S. § 38-541, AZ ST § 38-541

Current through legislation effective May 10, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

Arizona Revised Statutes Annotated

Title 38. Public Officers and Employees (Refs & Annos)

Chapter 3.1. Standards for Financial Disclosure (Refs & Annos)

Article 1. General Provisions (Refs & Annos)

A.R.S. § 38-543

§ 38-543. Duty to file financial disclosure statement by candidate for public office

Effective: August 6, 2016

Currentness

A candidate for public office as specified in § 38-541, paragraph 8 shall file a financial disclosure statement covering the preceding twelve month period and containing the information described in § 18-444 on a form prescribed by the secretary of state at the time of filing of nomination papers.

**Credits**

Added by Laws 1974, Ch. 199, § 5. Amended by Laws 1976, Ch. 162, § 65; Laws 1983, Ch. 328, § 8, eff. Jan. 1, 1984; Laws 2016, Ch. 80, § 19.

A. R. S. § 38-543, AZ ST § 38-543

Current through legislation effective May 10, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

Arizona Revised Statutes Annotated

Title 38. Public Officers and Employees (Refs & Annos)

Chapter 3.1. Standards for Financial Disclosure (Refs & Annos)

Article 1. General Provisions (Refs & Annos)

A.R.S. § 38-544

## § 38-544. Violation; classification

Effective: November 5, 2016

Currentness

**A.** Any public officer, local public officer or candidate who knowingly fails to file a financial disclosure statement required pursuant to § 18-444, 38-543 or 38-545, who knowingly files an incomplete financial disclosure statement or who knowingly files a false financial disclosure statement is guilty of a class 1 misdemeanor.

**B.** Any public officer, local public officer or candidate who violates this chapter is subject to a civil penalty of fifty dollars for each day of noncompliance but not more than five hundred dollars that may be imposed as prescribed in §§ 16-937 and 16-938.

### Credits

Added by Laws 1974, Ch. 199, § 5. Amended by Laws 1978, Ch. 201, § 689, eff. Oct. 1, 1978; Laws 1983, Ch. 328, § 9, eff. Jan. 1, 1984; Laws 1993, Ch. 226, § 18, eff. Jan. 2, 1994; Laws 2016, Ch. 79, § 27, eff. Nov. 5, 2016; Laws 2016, Ch. 80, § 20.

### Notes of Decisions (1)

A. R. S. § 38-544, AZ ST § 38-544

Current through legislation effective May 10, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).



Arizona Revised Statutes Annotated

Title 38. Public Officers and Employees (Refs & Annos)

Chapter 3.1. Standards for Financial Disclosure (Refs & Annos)

Article 1. General Provisions (Refs & Annos)

A.R.S. § 38-545

## § 38-545. Local public officers financial disclosure

Currentness

Notwithstanding the provisions of any law, charter or ordinance to the contrary, every incorporated city or town or county shall by ordinance, rule, resolution or regulation adopt standards of financial disclosure consistent with the provisions of this chapter applicable to local public officers.

### Credits

Added by Laws 1974, Ch. 199, § 5. Amended by Laws 1983, Ch. 328, § 10, eff. Jan. 1, 1984.

Notes of Decisions (8)

A. R. S. § 38-545, AZ ST § 38-545

Current through legislation effective May 10, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

Decision No. 78040

Arizona Revised Statutes Annotated  
Title 39. Public Records, Printing and Notices  
Chapter 1. Public Records (Refs & Annos)  
Article 2. Searches and Copies (Refs & Annos)

A.R.S. § 39-121

## § 39-121. Inspection of public records

Currentness

Public records and other matters in the custody of any officer shall be open to inspection by any person at all times during office hours.

### Credits

Amended by Laws 2000, Ch. 88, § 53.

Notes of Decisions (217)

A. R. S. § 39-121, AZ ST § 39-121

Current through legislation effective May 10, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

Decision No. 78040

KeyCite Yellow Flag - Negative Treatment  
Proposed Legislation

Arizona Revised Statutes Annotated  
Title 39. Public Records, Printing and Notices  
Chapter 1. Public Records (Refs & Annos)  
Article 2. Searches and Copies (Refs & Annos)

A.R.S. § 39-121.01

§ 39-121.01. Definitions; maintenance of records; copies, printouts  
or photographs of public records; examination by mail; index

Effective: April 7, 2021  
Currentness

**A.** In this article, unless the context otherwise requires:

1. "Officer" means any person elected or appointed to hold any elective or appointive office of any public body and any chief administrative officer, head, director, superintendent or chairman of any public body.

2. "Public body" means this state, any county, city, town, school district, political subdivision or tax-supported district in this state, any branch, department, board, bureau, commission, council or committee of the foregoing, and any public organization or agency, supported in whole or in part by monies from this state or any political subdivision of this state, or expending monies provided by this state or any political subdivision of this state.

**B.** All officers and public bodies shall maintain all records, including records as defined in § 41-151, reasonably necessary or appropriate to maintain an accurate knowledge of their official activities and of any of their activities that are supported by monies from this state or any political subdivision of this state.

**C.** Each public body shall be responsible for the preservation, maintenance and care of that body's public records, and each officer shall be responsible for the preservation, maintenance and care of that officer's public records. It shall be the duty of each such body to carefully secure, protect and preserve public records from deterioration, mutilation, loss or destruction, unless disposed of pursuant to §§ 41-151.15 and 41-151.19.

**D.** Subject to § 39-121.03:

1. Any person may request to examine or be furnished copies, printouts or photographs of any public record during regular office hours or may request that the custodian mail a copy of any public record not otherwise available on the public body's website to the requesting person. The custodian may require any person requesting that the custodian mail a copy of any public record to pay in advance for any copying and postage charges. The custodian of such records shall promptly furnish such copies, printouts or photographs and may charge a fee if the facilities are available, except that public records for purposes listed in § 39-122 or 39-127 shall be furnished without charge.

Decision No. 78040

2. If requested, the custodian of the records of an agency shall also furnish an index of records or categories of records that have been withheld and the reasons the records or categories of records have been withheld from the requesting person. The custodian shall not include in the index information that is expressly made privileged or confidential in statute or a court order. This paragraph shall not be construed by an administrative tribunal or a court of competent jurisdiction to prevent or require an order compelling a public body other than an agency to furnish an index. For the purposes of this paragraph, "agency" has the same meaning prescribed in § 41-1001 but does not include the department of public safety, the department of transportation motor vehicle division, the department of juvenile corrections and the state department of corrections.

3. If the custodian of a public record does not have facilities for making copies, printouts or photographs of a public record that a person has a right to inspect, the person shall be granted access to the public record for the purpose of making copies, printouts or photographs. The copies, printouts or photographs shall be made while the public record is in the possession, custody and control of the custodian of the public record and shall be subject to the supervision of the custodian.

E. Access to a public record is deemed denied if a custodian fails to promptly respond to a request for production of a public record or fails to provide to the requesting person an index of any record or categories of records that are withheld from production pursuant to subsection D, paragraph 2 of this section.

#### Credits

Added by Laws 1975, Ch. 147, § 1. Amended by Laws 1976, Ch. 104, § 17; Laws 1977, Ch. 54, § 2, eff. May 17, 1977; Laws 2000, Ch. 88, § 54; Laws 2002, Ch. 211, § 2; Laws 2004, Ch. 158, § 1; Laws 2006, Ch. 167, § 1; Laws 2011, Ch. 18, § 28; Laws 2021, Ch. 187, § 4, eff. April 7, 2021.

#### Notes of Decisions (109)

A. R. S. § 39-121.01, AZ ST § 39-121.01

Current through legislation effective May 10, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

Arizona Revised Statutes Annotated  
Title 39. Public Records, Printing and Notices  
Chapter 1. Public Records (Refs & Annos)  
Article 2. Searches and Copies (Refs & Annos)

A.R.S. § 39-121.02

§ 39-121.02. Action on denial of access; costs and attorney fees; damages

Effective: January 1, 2013

Currentness

**A.** Any person who has requested to examine or copy public records pursuant to this article, and who has been denied access to or the right to copy such records, may appeal the denial through a special action in the superior court, pursuant to the rules of procedure for special actions against the officer or public body.

**B.** The court may award attorney fees and other legal costs that are reasonably incurred in any action under this article if the person seeking public records has substantially prevailed. Nothing in this subsection shall limit the rights of any party to recover attorney fees, expenses and double damages pursuant to § 12-349.

**C.** Any person who is wrongfully denied access to public records pursuant to this article has a cause of action against the officer or public body for any damages resulting from the denial.

**Credits**

Added by Laws 1975, Ch. 147, § 1. Amended by Laws 2006, Ch. 249, § 1; Laws 2012, Ch. 305, § 3, eff. Jan. 1, 2013.

**Notes of Decisions (91)**

A. R. S. § 39-121.02, AZ ST § 39-121.02

Current through legislation effective May 10, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

Decision No. 78040

Arizona Revised Statutes Annotated  
Title 39. Public Records, Printing and Notices  
Chapter 1. Public Records (Refs & Annos)  
Article 2. Searches and Copies (Refs & Annos)

A.R.S. § 39-121.03

§ 39-121.03. Request for copies, printouts or photographs; statement of purpose; commercial purpose as abuse of public record; determination by governor; civil penalty; definition

Currentness

**A.** When a person requests copies, printouts or photographs of public records for a commercial purpose, the person shall provide a statement setting forth the commercial purpose for which the copies, printouts or photographs will be used. Upon being furnished the statement the custodian of such records may furnish reproductions, the charge for which shall include the following:

1. A portion of the cost to the public body for obtaining the original or copies of the documents, printouts or photographs.
2. A reasonable fee for the cost of time, materials, equipment and personnel in producing such reproduction.
3. The value of the reproduction on the commercial market as best determined by the public body.

**B.** If the custodian of a public record determines that the commercial purpose stated in the statement is a misuse of public records or is an abuse of the right to receive public records, the custodian may apply to the governor requesting that the governor by executive order prohibit the furnishing of copies, printouts or photographs for such commercial purpose. The governor, upon application from a custodian of public records, shall determine whether the commercial purpose is a misuse or an abuse of the public record. If the governor determines that the public record shall not be provided for such commercial purpose the governor shall issue an executive order prohibiting the providing of such public records for such commercial purpose. If no order is issued within thirty days of the date of application, the custodian of public records shall provide such copies, printouts or photographs upon being paid the fee determined pursuant to subsection A.

**C.** A person who obtains a public record for a commercial purpose without indicating the commercial purpose or who obtains a public record for a noncommercial purpose and uses or knowingly allows the use of such public record for a commercial purpose or who obtains a public record for a commercial purpose and uses or knowingly allows the use of such public record for a different commercial purpose or who obtains a public record from anyone other than the custodian of such records and uses it for a commercial purpose shall in addition to other penalties be liable to the state or the political subdivision from which the public record was obtained for damages in the amount of three times the amount which would have been charged for the public record had the commercial purpose been stated plus costs and reasonable attorney fees or shall be liable to the state or the political subdivision for the amount of three times the actual damages if it can be shown that the public record would not have been provided had the commercial purpose of actual use been stated at the time of obtaining the records.

Decision No. 78040



**D.** For the purposes of this section, “commercial purpose” means the use of a public record for the purpose of sale or resale or for the purpose of producing a document containing all or part of the copy, printout or photograph for sale or the obtaining of names and addresses from public records for the purpose of solicitation or the sale of names and addresses to another for the purpose of solicitation or for any purpose in which the purchaser can reasonably anticipate the receipt of monetary gain from the direct or indirect use of the public record. Commercial purpose does not mean the use of a public record as evidence or as research for evidence in an action in any judicial or quasi-judicial body.

**Credits**

Added by Laws 1977, Ch. 54, § 3, eff. May 17, 1977. Amended by Laws 1985, Ch. 213, § 4; Laws 2000, Ch. 88, § 55.

Notes of Decisions (16)

A. R. S. § 39-121.03, AZ ST § 39-121.03

Current through legislation effective May 10, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

Arizona Revised Statutes Annotated  
Title 39. Public Records, Printing and Notices  
Chapter 1. Public Records (Refs & Annos)  
Article 2. Searches and Copies (Refs & Annos)

A.R.S. § 39-121.04

§ 39-121.04. Public access to law enforcement records  
depicting certain witnesses or crime victims; victim rights

Effective: August 6, 2016  
Currentness

**A.** In a special action brought pursuant to this article for the release of any record created or received by or in the possession of a law enforcement or prosecution agency that relates to a criminal investigation or prosecution and that visually depicts the image of a witness under eighteen years of age or a victim as defined in § 13-4401, the petitioner shall establish that the public's interest in disclosure outweighs the witness's or victim's right to privacy.

**B.** A victim whose image is depicted in a record described in subsection A of this section has the right to be present at and to be heard in any action brought pursuant to this article for the release of records described in subsection A of this section.

**Credits**

Added by Laws 2016, Ch. 194, § 1.

A. R. S. § 39-121.04, AZ ST § 39-121.04

Current through legislation effective May 10, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

Decision No. 78040

Arizona Revised Statutes Annotated  
Title 39. Public Records, Printing and Notices  
Chapter 1. Public Records (Refs & Annos)  
Article 2. Searches and Copies (Refs & Annos)

A.R.S. § 39-122

§ 39-122. Free searches for and copies of public records to be  
used in claims against United States; liability for noncompliance

Currentness

A. No state, county or city, or any officer or board thereof shall demand or receive a fee or compensation for issuing certified copies of public records or for making search for them, when they are to be used in connection with a claim for a pension, allotment, allowance, compensation, insurance or other benefits which is to be presented to the United States or a bureau or department thereof.

B. Notaries public shall not charge for an acknowledgment to a document which is to be so filed or presented.

C. The services specified in subsections A and B shall be rendered on request of an official of the United States, a claimant, his guardian or attorney. For each failure or refusal so to do, the officer so failing shall be liable on his official bond.

Notes of Decisions (2)

A. R. S. § 39-122, AZ ST § 39-122

Current through legislation effective May 10, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.



KeyCite Red Flag - Severe Negative Treatment

Enacted Legislation Amended by 2021 Ariz. Legis. Serv. Ch. 96 (H.B. 2073) (WEST).

Arizona Revised Statutes Annotated  
Title 39. Public Records, Printing and Notices  
Chapter 1. Public Records (Refs & Annos)  
Article 2. Searches and Copies (Refs & Annos)

A.R.S. § 39-123

## § 39-123. Information identifying eligible persons; confidentiality; definitions

Effective: August 27, 2019

Currentness

**A.** Nothing in this chapter requires disclosure from a personnel file by a law enforcement agency or employing state or local governmental entity of the home address or home telephone number of eligible persons.

**B.** The agency or governmental entity may release the information in subsection A of this section only if either:

1. The person consents in writing to the release.

2. The custodian of records of the agency or governmental entity determines that release of the information does not create a reasonable risk of physical injury to the person or the person's immediate family or damage to the property of the person or the person's immediate family.

**C.** A law enforcement agency may release a photograph of a peace officer if either:

1. The peace officer has been arrested or has been formally charged by complaint, information or indictment for a misdemeanor or a felony offense.

2. The photograph is requested by a representative of a newspaper for a specific newsworthy event unless:

(a) The peace officer is serving in an undercover capacity or is scheduled to be serving in an undercover capacity within sixty days.

(b) The release of the photograph is not in the best interest of this state after taking into consideration the privacy, confidentiality and safety of the peace officer.

(c) An order pursuant to § 28-454 is in effect.

Decision No. 78040

D. This section does not prohibit the use of a peace officer's photograph that is either:

1. Used by a law enforcement agency to assist a person who has a complaint against an officer to identify the officer.
2. Obtained from a source other than the law enforcement agency.

E. This section does not apply to a certified peace officer or code enforcement officer who is no longer employed as a peace officer or code enforcement officer by a state or local government entity.

F. For the purposes of this section:

1. "Code enforcement officer" means a person who is employed by a state or local government and whose duties include performing field inspections of buildings, structures or property to ensure compliance with and enforce national, state and local laws, ordinances and codes.
2. "Commissioner" means a commissioner of the superior court.
3. "Corrections support staff member" means an adult or juvenile corrections employee who has direct contact with inmates.
4. "Eligible person" means a former public official, peace officer, spouse of a peace officer, spouse or minor child of a deceased peace officer, border patrol agent, justice, judge, commissioner, public defender, prosecutor, code enforcement officer, adult or juvenile corrections officer, corrections support staff member, probation officer, member of the board of executive clemency, law enforcement support staff member, employee of the department of child safety or employee of adult protective services who has direct contact with families in the course of employment, national guard member who is acting in support of a law enforcement agency, person who is protected under an order of protection or injunction against harassment, firefighter who is assigned to the Arizona counter terrorism information center in the department of public safety or victim of domestic violence or stalking who is protected under an order of protection or injunction against harassment.
5. "Former public official" means a person who was duly elected or appointed to Congress, the legislature or a statewide office, who ceased serving in that capacity and who was the victim of a dangerous offense as defined in § 13-105 while in office.
6. "Judge" means a judge or former judge of the United States district court, the United States court of appeals, the United States magistrate court, the United States bankruptcy court, the United States immigration court, the Arizona court of appeals, the superior court or a municipal court.
7. "Justice" means a justice of the United States or Arizona supreme court or a justice of the peace.
8. "Law enforcement support staff member" means a person who serves in the role of an investigator or prosecutorial assistant in an agency that investigates or prosecutes crimes, who is integral to the investigation or prosecution of crimes and whose name or identity will be revealed in the course of public proceedings.

Decision No. 78040

9. "Peace officer" has the same meaning prescribed in § 13-105.

10. "Prosecutor" means a county attorney, a municipal prosecutor, the attorney general or a United States attorney and includes an assistant or deputy United States attorney, county attorney, municipal prosecutor or attorney general.

11. "Public defender" means a federal public defender, county public defender, county legal defender or county contract indigent defense counsel and includes an assistant or deputy federal public defender, county public defender or county legal defender.

#### Credits

Added by Laws 1995, Ch. 103, § 1. Amended by Laws 2001, Ch. 124, § 7; Laws 2003, Ch. 106, § 6; Laws 2004, Ch. 180, § 1; Laws 2006, Ch. 298, § 4; Laws 2007, Ch. 141, § 7; Laws 2011, Ch. 173, § 4; Laws 2013, Ch. 211, § 7; Laws 2014, Ch. 164, § 5, eff. April 23, 2014; Laws 2015, Ch. 79, § 5; Laws 2015, Ch. 259, § 7; Laws 2019, Ch. 321, § 6.

A. R. S. § 39-123, AZ ST § 39-123

Current through legislation effective May 10, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

Arizona Revised Statutes Annotated  
Title 39. Public Records, Printing and Notices  
Chapter 1. Public Records (Refs & Annos)  
Article 2. Searches and Copies (Refs & Annos)

A.R.S. § 39-123.01

§ 39-123.01. Personal identifying information of crime witnesses; confidentiality; definition

Effective: August 6, 2016

Currentness

**A.** The personal identifying information of a witness to a crime contained in a record that is created or received by a law enforcement or prosecution agency and that is related to a criminal investigation or prosecution may not be disclosed by a public body pursuant to this article unless any of the following applies:

1. The witness consents in writing to the disclosure.
2. A court of competent jurisdiction orders the disclosure.
3. The witness's address is the location where the crime occurred.

**B.** This section does not affect any records that are transmitted between law enforcement and prosecution agencies, a court or a clerk of the court or any provision of law that governs the discovery process or the conduct of trials.

**C.** For the purposes of this section, "personal identifying information" includes a witness's date of birth, social security number, personal telephone number, home address, personal e-mail address and official state or government-issued driver license or identification number.

**Credits**

Added by Laws 2016, Ch. 194, § 1.

A. R. S. § 39-123.01, AZ ST § 39-123.01

Current through legislation effective May 10, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

Decision No. 78040





KeyCite Red Flag - Severe Negative Treatment

Enacted Legislation Amended by 2021 Ariz. Legis. Serv. Ch. 96 (H.B. 2073) (WEST).

Arizona Revised Statutes Annotated  
Title 39. Public Records, Printing and Notices  
Chapter 1. Public Records (Refs & Annos)  
Article 2. Searches and Copies (Refs & Annos)

A.R.S. § 39-124

§ 39-124. Releasing information identifying an  
eligible person; violations; classification; definitions

Effective: August 27, 2019

Currentness

**A.** Any person who is employed by a state or local government entity and who, in violation of § 39-123, knowingly releases the home address or home telephone number of an eligible person with the intent to hinder an investigation, cause physical injury to an eligible person or the eligible person's immediate family or cause damage to the property of an eligible person or the eligible person's immediate family is guilty of a class 6 felony.

**B.** Any person who is employed by a state or local government entity and who, in violation of § 39-123, knowingly releases a photograph of a peace officer with the intent to hinder an investigation, cause physical injury to a peace officer or the peace officer's immediate family or cause damage to the property of a peace officer or the peace officer's immediate family is guilty of a class 6 felony.

**C.** For the purposes of this section:

1. "Code enforcement officer" means a person who is employed by a state or local government and whose duties include performing field inspections of buildings, structures or property to ensure compliance with and enforce national, state and local laws, ordinances and codes.

2. "Commissioner" means a commissioner of the superior court.

3. "Corrections support staff member" means an adult or juvenile corrections employee who has direct contact with inmates.

4. "Eligible person" means a former public official, peace officer, spouse of a peace officer, spouse or minor child of a deceased peace officer, border patrol agent, justice, judge, commissioner, public defender, prosecutor, code enforcement officer, adult or juvenile corrections officer, corrections support staff member, probation officer, member of the board of executive clemency, law enforcement support staff member, employee of the department of child safety or employee of adult protective services who has direct contact with families in the course of employment, national guard member who is acting in support of a law enforcement agency, person who is protected under an order of protection or injunction against harassment, firefighter who is

Decision No. 78040

assigned to the Arizona counter terrorism information center in the department of public safety or victim of domestic violence or stalking who is protected under an order of protection or injunction against harassment.

5. "Former public official" means a person who was duly elected or appointed to Congress, the legislature or a statewide office, who ceased serving in that capacity and who was the victim of a dangerous offense as defined in § 13-105 while in office.

6. "Judge" means a judge or former judge of the United States district court, the United States court of appeals, the United States magistrate court, the United States bankruptcy court, the United States immigration court, the Arizona court of appeals, the superior court or a municipal court.

7. "Justice" means a justice of the United States or Arizona supreme court or a justice of the peace.

8. "Law enforcement support staff member" means a person who serves in the role of an investigator or prosecutorial assistant in an agency that investigates or prosecutes crimes, who is integral to the investigation or prosecution of crimes and whose name or identity will be revealed in the course of public proceedings.

9. "Peace officer" has the same meaning prescribed in § 13-105.

10. "Prosecutor" means a county attorney, a municipal prosecutor, the attorney general or a United States attorney and includes an assistant or deputy United States attorney, county attorney, municipal prosecutor or attorney general.

11. "Public defender" means a federal public defender, county public defender, county legal defender or county contract indigent defense counsel and includes an assistant or deputy federal public defender, county public defender or county legal defender.

#### Credits

Added by Laws 1995, Ch. 103, § 1. Amended by Laws 2001, Ch. 124, § 8; Laws 2003, Ch. 106, § 7; Laws 2004, Ch. 180, § 2; Laws 2006, Ch. 298, § 5; Laws 2007, Ch. 141, § 8; Laws 2011, Ch. 173, § 5; Laws 2013, Ch. 211, § 8; Laws 2014, Ch. 164, § 6, eff. April 23, 2014; Laws 2015, Ch. 79, § 6; Laws 2015, Ch. 259, § 8; Laws 2019, Ch. 321, § 7.

A. R. S. § 39-124, AZ ST § 39-124

Current through legislation effective May 10, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

KeyCite Yellow Flag - Negative Treatment

Proposed Legislation

Arizona Revised Statutes Annotated  
Title 39. Public Records, Printing and Notices  
Chapter 1. Public Records (Refs & Annos)  
Article 2. Searches and Copies (Refs & Annos)

A.R.S. § 39-125

§ 39-125. Information relating to location of archaeological discoveries and places or objects included or eligible for inclusion on the Arizona register of historic places; confidentiality

Currentness

Nothing in this chapter requires the disclosure of public records or other matters in the office of any officer that relate to the location of archaeological discoveries as described in § 41-841 or 41-844 or places or objects that are included on or may qualify for inclusion on the Arizona register of historic places as described in § 41-511.04, subsection A, paragraph 9. An officer may decline to release this information if the officer determines that the release of the information creates a reasonable risk of vandalism, theft or other damage to the archaeological discoveries or the places or objects that are included on or may qualify for inclusion on the register. In making a decision to disclose public records pursuant to this section, an officer may consult with the director of the Arizona state museum or the state historic preservation officer.

**Credits**

Added by Laws 1998, Ch. 197, § 1.

A. R. S. § 39-125, AZ ST § 39-125

Current through legislation effective May 10, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

Decision No. 78040

Arizona Revised Statutes Annotated

Title 39. Public Records, Printing and Notices

Chapter 1. Public Records (Refs & Annos)

Article 2. Searches and Copies (Refs & Annos)

A.R.S. § 39-126

## § 39-126. Federal risk assessments of infrastructure; confidentiality

Currentness

Nothing in this chapter requires the disclosure of a risk assessment that is performed by or on behalf of a federal agency to evaluate critical energy, water or telecommunications infrastructure to determine its vulnerability to sabotage or attack.

### Credits

Added by Laws 2003, Ch. 118, § 1.

A. R. S. § 39-126, AZ ST § 39-126

Current through legislation effective May 10, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

Decision No. 78040

Arizona Revised Statutes Annotated  
Title 39. Public Records, Printing and Notices  
Chapter 1. Public Records (Refs & Annos)  
Article 2. Searches and Copies (Refs & Annos)

A.R.S. § 39-126.01

§ 39-126.01. Local government; telecommunications  
infrastructure records; nondisclosure; exceptions

Effective: September 13, 2013  
Currentness

**A.** Except as provided in subsection B, a city, town or county shall not disclose any records relating to the construction of wireline telecommunications infrastructure, including the location of lines, equipment and plants used for telecommunications services on or along public streets or highways.

**B.** A city, town or county may disclose information relating to the location of lines, equipment and plants used for telecommunications services for any of the following:

1. As part of the bid, design or construction process of a capital project.
2. To provide information on the availability of telecommunications services for economic development purposes.
3. To provide general information to residents regarding construction activity within the city, town or county.

**Credits**

Added by Laws 2013, Ch. 92, § 1.

A. R. S. § 39-126.01, AZ ST § 39-126.01

Current through legislation effective May 10, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

Arizona Revised Statutes Annotated  
 Title 39. Public Records, Printing and Notices  
 Chapter 1. Public Records (Refs & Annos)  
 Article 2. Searches and Copies (Refs & Annos)

A.R.S. § 39-127

§ 39-127. Free copies of police reports and transcripts for crime victims; definition

Effective: July 3, 2015

Currentness

**A.** A victim of a criminal offense that is a part I crime under the statewide uniform crime reporting program, the victim's attorney on behalf of the victim or an immediate family member of the victim if the victim is killed or incapacitated has the right to receive one copy of the police report from the investigating law enforcement agency at no charge and, on request of the victim, the court or the clerk of the court shall provide, at no charge, the minute entry or portion of the record of any proceeding in the case that arises out of the offense committed against the victim and that is reasonably necessary for the purpose of pursuing a claimed victim's right. For the purposes of this subsection, "criminal offense", "immediate family" and "victim" have the same meanings prescribed in § 13-4401.

**B.** A victim of a delinquent act that is a part I crime under the statewide uniform crime reporting program, the victim's attorney on behalf of the victim or an immediate family member of the victim if the victim is killed or incapacitated has the right to receive one copy of the police report from the investigating law enforcement agency at no charge and, on request of the victim, the court or the clerk of the court shall provide, at no charge, the minute entry or portion of the record of any proceeding in the case that arises out of the offense committed against the victim and that is reasonably necessary for the purpose of pursuing a claimed victim's right. For the purposes of this subsection, "delinquent act", "immediate family" and "victim" have the same meanings prescribed in § 8-382.

**C.** For the purposes of this section, "attorney" means any person who is a member in good standing of the bar of the highest court of any state, possession, territory, commonwealth or district of the United States and who is not under any order of any court suspending, enjoining, restraining, disbaring or otherwise restricting the person in the practice of law.

**Credits**

Added by Laws 2006, Ch. 167, § 2. Amended by Laws 2007, Ch. 290, § 11; Laws 2014, Ch. 269, § 15; Laws 2015, Ch. 303, § 1.

A. R. S. § 39-127, AZ ST § 39-127

Current through legislation effective May 10, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).





Arizona Revised Statutes Annotated  
Title 39. Public Records, Printing and Notices  
Chapter 1. Public Records (Refs & Annos)  
Article 3. Lost Records

A.R.S. § 39-141

## § 39-141. Proof of certain lost or destroyed documents or instruments

Currentness

Any deed, bond, bill of sale, mortgage, deed of trust, power of attorney or conveyance which is required or permitted by law to be acknowledged or recorded which has been so acknowledged or recorded, or any judgment, order or decree of a court of record in this state or the record or minute containing such judgment, which is lost or destroyed, may be supplied by parol proof of its contents.

Notes of Decisions (2)

A. R. S. § 39-141, AZ ST § 39-141

Current through legislation effective May 10, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

Decision No. 78040

Arizona Revised Statutes Annotated  
Title 39. Public Records, Printing and Notices  
Chapter 1. Public Records (Refs & Annos)  
Article 3. Lost Records

A.R.S. § 39-142

§ 39-142. Action for restoration and substitution of lost or destroyed documents

Currentness

Upon loss or destruction of an instrument as indicated in § 39-141, a person interested therein may bring an action in the superior court of the county where the loss or destruction occurred for restoration and substitution of such instrument against the grantor in a deed, or the parties interested in the instrument, or the parties who were interested adversely to plaintiff at the time of the rendition of judgment, or who are then adversely interested, or the heirs and legal representatives of such parties.

A. R. S. § 39-142, AZ ST § 39-142

Current through legislation effective May 10, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

Arizona Revised Statutes Annotated  
Title 39. Public Records, Printing and Notices  
Chapter 1. Public Records (Refs & Annos)  
Article 3. Lost Records

A.R.S. § 39-143

§ 39-143. Judgment of restoration; recording of  
judgment; judgment as substitute for original instrument

Currentness

**A.** If upon the trial of the action provided for in § 39-142, the court finds that such instrument existed, and has been lost or destroyed and determines the contents thereof, it shall enter a judgment containing the finding and a description of the lost instrument and contents thereof.

**B.** A certified copy of the judgment may be recorded, and shall be substituted for and have the same force and effect as the original instrument.

A. R. S. § 39-143, AZ ST § 39-143

Current through legislation effective May 10, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

Decision No. 78040

Arizona Revised Statutes Annotated  
Title 39. Public Records, Printing and Notices  
Chapter 1. Public Records (Refs & Annos)  
Article 3. Lost Records

A.R.S. § 39-144

§ 39-144. Recording of certified copies of lost or  
destroyed records or records of a former county

Currentness

Certified copies from a record of a county, the record of which has been lost or destroyed, and certified copies from records of the county from which a new county was created, may be recorded in such county when the loss of the original has been first established.

A. R. S. § 39-144, AZ ST § 39-144

Current through legislation effective May 10, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

Decision No. 78040

Arizona Revised Statutes Annotated  
Title 39. Public Records, Printing and Notices  
Chapter 1. Public Records (Refs & Annos)  
Article 3. Lost Records

A.R.S. § 39-145

§ 39-145. Re-recording of original papers when record destroyed

Currentness

When the original papers have been preserved but the record thereof has been lost or destroyed, they may again be recorded within four years from the loss or destruction of such record. The last registration shall have force and effect from the date of the original registration.

A. R. S. § 39-145, AZ ST § 39-145

Current through legislation effective May 10, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

Decision No. 78040

Arizona Revised Statutes Annotated  
Title 39. Public Records, Printing and Notices  
Chapter 1. Public Records (Refs & Annos)  
Article 4. False Instruments and Records

A.R.S. § 39-161

§ 39-161. Presentment of false instrument for filing; classification

Currentness

A person who acknowledges, certifies, notarizes, procures or offers to be filed, registered or recorded in a public office in this state an instrument he knows to be false or forged, which, if genuine, could be filed, registered or recorded under any law of this state or the United States, or in compliance with established procedure is guilty of a class 6 felony. As used in this section "instrument" includes a written instrument as defined in § 13-2001.

**Credits**

Amended by Laws 1978, Ch. 201, § 695, eff. Oct. 1, 1978; Laws 1980, Ch. 229, § 44, eff. April 23, 1980.

Notes of Decisions (16)

A. R. S. § 39-161, AZ ST § 39-161

Current through legislation effective May 10, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

Decision No. 78040

Arizona Revised Statutes Annotated  
Title 40. Public Utilities and Carriers  
Chapter 1. Corporation Commission (Refs & Annos)  
Article 1. In General

A.R.S. § 40-101

§ 40-101. Interest of commissioner or employee  
prohibited in corporation subject to regulation

Effective: August 6, 2016  
Currentness

Notwithstanding any other law, a person in the employ of, or holding an official relation to a corporation or person subject to regulation by the commission, or a person owning stocks or bonds of a corporation subject to regulation, or a person who is pecuniarily interested therein, shall not be elected, appointed to, or hold the office of commissioner or be appointed or employed by the commission. If a commissioner, or appointee or employee of the commission becomes the owner of such stocks or bonds, or becomes pecuniarily interested in such a corporation involuntarily, he shall within a reasonable time divest himself of such stocks, bonds or interest. If he fails to do so, he thereby vacates his office or employment.

**Credits**

Amended by Laws 2016, Ch. 289, § 3.

**Notes of Decisions (15)**

A. R. S. § 40-101, AZ ST § 40-101

Current through legislation effective May 10, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

Decision No. 78040



## Arizona Revised Statutes Annotated

## Title 41. State Government (Refs &amp; Annos)

## Chapter 4. Department of Administration and Personnel Board (Refs &amp; Annos)

## Article 4. State Personnel System (Refs &amp; Annos)

## A.R.S. § 41-753

## § 41-753. Unlawful acts; violation; classification

Effective: July 24, 2014

Currentness

**A.** A person shall not make any false statement, certificate, mark, rating or report with regard to any test, certification or appointment made under this article or in any manner commit any fraud preventing the impartial execution of this article or rules adopted under this article.

**B.** A person shall not, directly or indirectly, give, render, pay, offer, solicit or accept any money, service or other valuable consideration for or on account of any appointment, proposed appointment, promotion or proposed promotion to, or any advantage in, a position in the state personnel system.

**C.** An employee of any state agency, examiner or other person shall not obstruct any person in the person's right to examination, eligibility, certification or appointment under this article, or furnish to any person any special or secret information for the purpose of affecting the rights or prospects of any person with respect to employment in the state personnel system.

**D.** An employee of any agency as defined in § 41-1001, including the office of the governor, who has a significant role in the procurement of materials, services or construction shall not accept an offer of employment from or have employment discussions with any person or entity lobbying for or potentially responding to a solicitation during a period beginning on signature of the first nondisclosure agreement pertaining to a particular solicitation or at the time of request for a sole source procurement or competition impracticable procurement and ending at the time of the contract award. An employee of any agency as defined in § 41-1001, including the office of the governor, who has a significant role in the procurement of materials, services or construction shall not accept an offer of employment from or have employment discussions with the successful offeror or offerors and their lobbyists during a period beginning on signature of the first nondisclosure agreement pertaining to a particular solicitation or at the time of request for a sole source procurement or competition impracticable procurement and ending one year after the purchased materials are delivered or the purchase of services or construction begins. The director of the department of administration may waive any or all of the waiting period in excess of twenty-four months for a procurement officer or an employee with a significant procurement role if the period of time that follows the signature of the nondisclosure agreement exceeds twenty-four months. A procurement officer or an employee seeking a waiver shall make a written request to the officer's or employee's state agency director, and the director of the state agency shall forward the request with a written recommendation to the director of the department of administration. The director of the department of administration shall provide a written decision and justification within fifteen business days after the receipt of the complete request. The director of the department of administration may not approve waiver requests for matters still in evaluation or within six months following the contract award. If the requesting party is the director or a deputy director of a state agency, the request for a waiver and all written materials, including a director recommendation, must be forwarded to the governor for a final decision, except that the director may not make any recommendation or determination on the director's own request. An agency as defined in § 41-1001, including the office of the governor, shall inform its employees when the first nondisclosure agreement is signed on a

Decision No. 78040

particular solicitation, and the agency shall notify the state procurement administrator who shall post information regarding the date of the first nondisclosure agreement pertaining to a particular procurement activity on the department of administration's website. This subsection does not apply to a procurement officer or an employee who in good faith relies on a determination issued by the director pursuant to § 41-2517, subsection D<sup>1</sup> that the procurement officer or employee has not had a significant procurement role.

E. Any person who knowingly violates subsection A, B, C or D of this section is guilty of a class 2 misdemeanor.

F. An elected or appointed official shall not with corrupt intent use the official's political influence or position to cause the firing, promotion or demotion of any public employee or the hiring of or failure to hire any applicant for public employment.

G. An elected or appointed official who knowingly and with corrupt intent violates subsection F of this section is guilty of a class 2 misdemeanor.

H. Any person who is convicted of a class 2 misdemeanor under this article, for a period of five years, is ineligible for appointment to or employment in a position in the state personnel system and, if the person is an employee of this state at the time of conviction, is subject to suspension for not less than ninety days or dismissal.

I. A contact by an elected or appointed official with a public agency regarding the qualifications of an applicant shall not be construed as illegally using political influence or position.

#### Credits

Added by Laws 2012, Ch. 321, § 115, eff. Sept. 29, 2012. Amended by Laws 2013, Ch. 190, § 3; Laws 2014, Ch. 145, § 2.

#### Footnotes

<sup>1</sup> So in original. Probably should read "subsection E".

A. R. S. § 41-753, AZ ST § 41-753

Current through legislation effective May 10, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

## Article 8.1. Registration and Regulation of Lobbyists (Refs &amp; Annos)

8. "Food or beverage" means the amount of any expenditure paid or incurred for food or beverages for a state officer or employee provided at a location at which the principal, public body, lobbyist, designated public lobbyist or authorized public lobbyist who made the expenditure is present.

9. "Gift" means a payment, distribution, expenditure, advance, deposit or donation of money, any intangible personal property or any kind of tangible personal or real property. For the purposes of this article, gift does not include:

(a) A gift, devise or inheritance from an individual's spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle or first cousin or the spouse of any such individual if the donor is not acting as the agent or intermediary for someone other than a person covered by this subdivision.

(b) Expenditures that are either properly reported or exempt from reporting under this chapter for:

(i) A speaking engagement.

(ii) Food or beverages.

(iii) Travel and lodging.

(iv) Flowers.

(c) Salary, compensation or employer-reimbursed expenses lawfully paid to a public official.

(d) The value, cost or price of professional or consulting services that are not rendered to obtain a benefit for any registered principal, public body, lobbyist, designated public lobbyist or authorized public lobbyist or the clients of a principal or lobbyist.

(e) Expenses relating to a special event or function to which all members of the legislature, either house of the legislature or any committee of the legislature is invited.

(f) A plaque or other form of recognition similar to a plaque to a state officer or state employee to signify the honorary recognition of a service or other notable accomplishment.

(g) Informational material such as books, reports, pamphlets, calendars or periodicals.

(h) An item that is not used and that is returned within fifteen days of receipt to the donor or that is delivered within fifteen days of receipt to a charitable organization and that is not claimed as a charitable contribution for state or federal income tax purposes.

(i) A campaign contribution that is properly received and reported as required by law.

(j) An item that is given to a state officer or employee if the state officer or employee gives an item of approximately the same value to the giver of the item at the same time that the item is given or on a similar occasion as the one that prompted the original item to be given.

(k) Gifts of a personal nature that were customarily received by an individual from the donor before the individual became a state officer or employee.

(l) An item that is given to the general public at an event.

10. "Legislation" means bills, resolutions, memorials, amendments, nominations and other matters that are pending or proposed in either house of the legislature of this state.

11. "Lobbying":

(a) Means attempting to influence the passage or defeat of any legislation by directly communicating with any legislator or attempting to influence any formal rulemaking proceeding pursuant to chapter 6 of this title<sup>1</sup> or rulemaking proceedings that are exempt from chapter 6 of this title by directly communicating with any state officer or employee.

(b) Includes, for a person who is otherwise required to be registered as a lobbyist for compensation pursuant to this article, attempting to influence the procurement of materials, services or construction by an agency as defined in § 41-1001, including the office of the governor.

(c) Does not include:

(i) Interagency communications between state agency employees.

(ii) Communications between a public official or employee of a public body, designated public lobbyist or authorized public lobbyist and any state officer, except for a member of the legislature, or an employee of the legislature.

(iii) Oral questions or comments made by a person to a state officer or employee regarding a proposed rule and made in public at a meeting or workshop that is open to the public and that is sponsored by a state agency, board, commission, council or office.

(iv) Communications between a public body and a self-employed person or person employed by a partnership or company regarding the procurement of materials, services or construction unless the self-employed person or person employed by a partnership or company is otherwise required to register pursuant to this article or is employed by, supervised by at any level or contracted by a person who is otherwise required to register as a lobbyist for compensation pursuant to this article.

12. "Lobbyist" means any person, other than a designated public lobbyist or authorized public lobbyist, who is employed by, retained by or representing a person other than himself, with or without compensation, for the purpose of lobbying and who

Decision No. 78040

is listed as a lobbyist by the principal in its registration pursuant to § 41-1232. Lobbyist includes a lobbyist for compensation, designated lobbyist and authorized lobbyist.

13. "Lobbyist for compensation" means a lobbyist who is compensated for the primary purpose of lobbying on behalf of a principal and who is listed by the principal in its registration pursuant to § 41-1232.

14. "Person" means an individual, partnership, committee, association or corporation and any other organization or group of persons, except legislators and political parties qualified for representation on the ballot pursuant to § 16-801 or 16-804.

15. "Personal hospitality" means hospitality, meals, beverages, transportation or lodging furnished but not commercially provided by a person on property or facilities owned or possessed by the person or the person's family.

16. "Principal" means any person, other than a public body, that employs, retains, engages or uses, with or without compensation, a lobbyist. Principal includes any subsidiary of a corporation.

17. "Procurement" has the same meaning prescribed in § 41-2503.

18. "Public body" means the Arizona board of regents, a university under the jurisdiction of the Arizona board of regents, the judicial department, any state agency, board, commission or council, any county, any county elected officer who elects to appoint a designated public lobbyist or any city, town, district or other political subdivision of this state that receives and uses tax revenues and that employs, retains, engages or uses, with or without compensation, a designated public lobbyist or authorized public lobbyist.

19. "Public official" means a person who is duly elected, appointed or retained through election to an elected state, county or local office.

20. "Single expenditure" means an expenditure that provides a benefit of more than twenty dollars to an individual state officer or state employee and that is incurred by or on behalf of one or more principals, public bodies, lobbyists, designated public lobbyists or authorized public lobbyists.

21. "Speaking engagement":

(a) Means the amount of any expense paid or incurred for entrance fees, lodging, food and beverage, entertainment, travel and other expenses for the state officer's or employee's attendance at an event, committee, meeting, conference or seminar, including meetings of state, regional or national organizations or their committees concerned with legislative or governmental activities if the state officer or employee participates in the event as a speaker or panel participant by presenting information relating to the state officer's or employee's legislative or official duties or by performing a ceremonial function appropriate to the state officer's or employee's position.

(b) Does not include expenditures for an honorarium or any other similar fee paid to a speaker.

22. "State employee" means an employee of the legislature, a university under the jurisdiction of the Arizona board of regents, the judicial department or a state office, agency, board, commission or council.

23. "State officer" means a person who is duly elected, appointed or retained through election to any state office, or a member of any state board, commission or council, and includes a member of the legislature.

**Credits**

Added by Laws 1974, Ch. 198, § 1. Amended by Laws 1978, Ch. 214, § 1, eff. Jan. 1, 1979; Laws 1991, 3rd S.S., Ch. 2, § 1, eff. June 1, 1992; Laws 1992, Ch. 106, § 1, eff. Sept. 30, 1992, retroactively effective to June 1, 1992; Laws 1993, Ch. 93, § 1; Laws 1993, Ch. 146, § 1, eff. April 20, 1993; Laws 1994, Ch. 380, § 1; Laws 1998, 5th S.S., Ch. 1, § 42, eff. July 9, 1998; Laws 2000, Ch. 364, § 1, eff. Jan. 1, 2001; Laws 2013, Ch. 190, § 4; Laws 2014, Ch. 145, § 3.

**Notes of Decisions (7)**

A. R. S. § 41-1231, AZ ST § 41-1231

Current through legislation effective May 10, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.



Arizona Revised Statutes Annotated  
Title 41. State Government (Refs & Annos)  
Chapter 7. Legislature (Refs & Annos)  
Article 8.1. Registration and Regulation of Lobbyists (Refs & Annos)

A.R.S. § 41-1232

§ 41-1232. Registration of principals; fee

Effective: August 27, 2019  
Currentness

**A.** Except as provided in subsection B of this section, before any principal causes any lobbying to occur on its behalf, the principal shall register with the secretary of state by filing a written statement in a format prescribed by the secretary of state, subscribed under penalty of perjury, containing the following information:

1. The name and business address of the principal.
2. The name and business address of a person who is the designated lobbyist for the principal, regardless of whether the person is engaged to lobby for compensation.
3. The name and business address of each lobbyist for compensation or authorized lobbyist employed by, retained by or representing the principal.
4. For each lobbyist for compensation, designated lobbyist or authorized lobbyist that is not an individual, the name and business address of all employees of that lobbyist who lobby on the principal's behalf.
5. The nature of the primary business or activity, issue, interest or purpose of the principal.
6. The duration of the engagement of any lobbyist.
7. A description of the expenses for which each lobbyist is to be reimbursed by the principal.
8. A listing of the state entities the lobbyist has been engaged or designated to lobby including the legislature and state agencies, boards, commissions or councils.

**B.** If a registration as required by subsection A of this section cannot be accomplished or is not practicable in advance of the first attempt or occasion to lobby, registration must occur within five business days after the day on which the first lobbying attempt, occasion or activity occurs.

Decision No. 78040

C. Each principal shall reregister not later than 5:00 p.m. on the second Monday in January of each odd numbered year unless at that time the principal no longer engages any lobbyist. A principal shall file its registration at any time beginning December 1 in the even numbered year until 5:00 p.m. on the second Monday in January in the odd numbered year. Each principal shall amend its registration statement within five business days of any change in the information required by subsection A of this section.

D. A principal shall provide notice to each lobbyist for compensation, authorized lobbyist and designated lobbyist who is named in the principal's registration or reregistration statement. The notice shall state that the principal has listed the lobbyist for compensation, authorized lobbyist or designated lobbyist on the principal's registration or reregistration statement and that this listing obligates the lobbyist for compensation or designated lobbyist to register and file all reports required by this article. The notice shall be accompanied by a summary of the lobbyist laws published by the secretary of state, the first page of the principal's registration and the page of the schedule on which the name of the lobbyist for compensation, authorized lobbyist or designated lobbyist appears.

E. Each principal that registers a lobbyist for compensation or a designated lobbyist who receives compensation for lobbying from the principal, at the time of registering or reregistering, shall pay a registration or reregistration fee of \$25 to the secretary of state. A principal may not be charged more than one \$25 fee per registration period. Registration and reregistration fees collected by the secretary of state shall be deposited, pursuant to §§ 35-146 and 35-147, in the state general fund, and, subject to legislative appropriation, the registration and reregistration fees for principals shall be used to reduce the costs associated with enforcing the lobbyist registration laws.

#### Credits

Added by Laws 1974, Ch. 198, § 1. Amended by Laws 1976, Ch. 162, § 67; Laws 1978, Ch. 214, § 2, eff. Jan. 1, 1979; Laws 1984, Ch. 296, § 3; Laws 1989, Ch. 231, § 1; Laws 1991, 3rd S.S., Ch. 2, § 2, eff. June 1, 1992; Laws 1992, Ch. 106, § 2, eff. Sept. 30, 1992, retroactively effective to June 1, 1992; Laws 1992, Ch. 319, § 36, eff. Nov. 1, 1992; Laws 1993, Ch. 93, § 2; Laws 1993, Ch. 146, § 2, eff. April 20, 1993; Laws 1994, Ch. 380, § 2; Laws 2000, Ch. 193, § 438; Laws 2010, Ch. 209, § 26, eff. April 28, 2010; Laws 2019, Ch. 218, § 1.

#### Notes of Decisions (21)

A. R. S. § 41-1232, AZ ST § 41-1232

Current through legislation effective May 10, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

Arizona Revised Statutes Annotated

Title 41. State Government (Refs & Annos)

Chapter 7. Legislature (Refs & Annos)

Article 8.1. Registration and Regulation of Lobbyists (Refs & Annos)

A.R.S. § 41-1232.01

§ 41-1232.01. Registration by public bodies; fee

Effective: August 27, 2019

Currentness

A. Except as provided in subsection B of this section, before any public body causes any lobbying to occur on its behalf, the public body shall register with the secretary of state by filing a written statement in a format prescribed by the secretary of state, subscribed under penalty of perjury, containing the following information:

1. The name and business address of the public body.
2. The name and business address of a person who is the designated public lobbyist for the public body, regardless of whether this person is engaged to lobby for compensation.
3. The name and business address of each authorized public lobbyist employed by, retained by or representing the public body.
4. For each designated public lobbyist or authorized public lobbyist that is not an individual, the name and business address of all employees of the designated public lobbyist or authorized public lobbyist who may lobby on the public body's behalf.
5. A description of the expenses for which each designated public lobbyist and authorized public lobbyist is to be reimbursed by the public body.

B. If a registration as required by subsection A of this section cannot be accomplished or is not practicable in advance of the first attempt or occasion to lobby, registration must occur within five business days after the day on which the first lobbying attempt, occasion or activity occurs.

C. Each public body shall reregister not later than 5:00 p.m. on the second Monday in January of each odd numbered year unless at that time the public body no longer engages any designated public lobbyist or authorized public lobbyist. A public body shall file its registration at any time beginning December 1 in the even numbered year until 5:00 p.m. on the second Monday in January in the odd numbered year. Each public body shall amend its registration statement within five business days of any change in the information required by subsection A of this section.

D. A public body shall provide notice to each designated public lobbyist or authorized public lobbyist who is named in the public body's registration or reregistration statement. The notice shall state that the public body has listed the designated public

Decision No. 78040

lobbyist or authorized public lobbyist on the public body's registration or reregistration statement and that this listing obligates the designated public lobbyist to register and file all reports required by this article. The notice shall be accompanied by a summary of the lobbyist laws published by the secretary of state, the first page of the public body's registration and the page of the schedule on which the designated or authorized public lobbyist's name appears.

**E.** Each public body that registers a designated public lobbyist who receives compensation for lobbying from the public body, at the time of registering or reregistering, shall pay a registration or reregistration fee of \$25 to the secretary of state. A public body may not be charged more than one \$25 fee per registration period. Registration and reregistration fees collected by the secretary of state shall be deposited, pursuant to §§ 35-146 and 35-147, in the state general fund, and, subject to legislative appropriation, the registration and reregistration fees for public bodies shall be used to reduce the costs associated with enforcing the lobbyist registration laws.

#### **Credits**

Added by Laws 1994, Ch. 380, § 3. Amended by Laws 2000, Ch. 193, § 439; Laws 2010, Ch. 209, § 27, eff. April 28, 2010; Laws 2019, Ch. 218, § 2.

A. R. S. § 41-1232.01, AZ ST § 41-1232.01

Current through legislation effective May 10, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

## Arizona Revised Statutes Annotated

## Title 41. State Government (Refs &amp; Annos)

## Chapter 7. Legislature (Refs &amp; Annos)

## Article 8.1. Registration and Regulation of Lobbyists (Refs &amp; Annos)

## A.R.S. § 41-1232.02

## § 41-1232.02. Expenditure reporting; principals and lobbyists; gifts

Effective: August 27, 2019

Currentness

**A.** Each principal shall report annually all single expenditures, whether or not the expenditures were made in the course of lobbying. These single expenditures shall be itemized separately, and each itemization shall include the date of the expenditure, the amount of the expenditure, the name of each state officer or employee receiving or benefitting from the expenditure, the category of the expenditure and the name of the lobbyist or other person who made the expenditure on behalf of the principal. In addition each principal shall report annually the aggregate of all expenditures of \$20 or less received by or benefitting a state officer or employee, whether or not the expenditures were made in the course of lobbying. The report shall be filed by March 1 and shall list the annual expenditures made on behalf of the principal. If March 1 is a Saturday, Sunday or other legal holiday, the report shall be filed on the next business day.

**B.** Each lobbyist for compensation and designated lobbyist shall report quarterly all single expenditures incurred in the preceding calendar quarter by the lobbyist for compensation or designated lobbyist, whether or not the single expenditures were made in the course of lobbying. These single expenditures shall be itemized separately, and each itemization shall include the date of the expenditure, the amount of the expenditure, the name of the state officer or employee receiving or benefitting from the expenditure, the category of the expenditure and the principal on whose behalf the expenditure was made. If the expenditure was made by the lobbyist and was not made on behalf of a principal, it shall be itemized separately. The quarterly report shall be filed not later than the last day of the month following the end of the calendar quarter, unless the last day of the month is a Saturday, Sunday or other legal holiday. In that case, the report shall be filed on the next business day.

**C.** Each lobbyist for compensation and designated lobbyist shall also report quarterly the aggregate of all expenditures of \$20 or less received by or benefitting a state officer or employee, whether or not the expenditures were made in the course of lobbying. The report shall list separately the aggregate of expenditures made on behalf of each principal and the aggregate not made on behalf of any principal. In the fourth calendar quarter, these expenditures shall also be listed by cumulative total for the calendar year. Each quarterly lobbyist report shall include all reportable expenditures made by any employee of the lobbyist for compensation or designated lobbyist, regardless of whether that employee is listed as a lobbyist on any registration filed by a principal engaging the lobbyist. The quarterly report shall be filed not later than the last day of the month following the end of the calendar quarter, unless the last day of the month is a Saturday, Sunday or other legal holiday. In that case, the report shall be filed the next business day.

**D.** The reports required by subsections A and B of this section shall identify each single expenditure according to the following categories:

1. Food or beverages.

Decision No. 78040

2. Speaking engagement.

3. Travel and lodging.

4. Flowers.

5. Other expenditures.

E. Expenditures by principals and lobbyists such as those for the lobbyist's personal sustenance, office expenses, filing fees, legal fees, employees' compensation, lodging and travel are not required to be reported. In addition, expenditures by a principal or a lobbyist for family gifts, personal hospitality or those items excluded from the definition of gift pursuant to § 41-1231, paragraph 9, subdivision (a), (c), (d), (f), (g), (h), (i), (j), (k) or (l) are not required to be reported.

F. All expenditures incurred by a principal or lobbyist for special events for legislators, including parties, dinners, athletic events, entertainment and other functions, to which all members of the legislature, either house of the legislature or any committee of the legislature are invited shall be reported. Expenditures are not required to be allocated to individual legislators, but for each such event a description of the event and the date, location, name of the legislative body invited and total expenditures incurred shall be reported. Expenditures for special events held in conjunction with state, national or regional meetings of an organization or association concerned or dealing with legislative or other governmental activities to which all state officers or state employees in attendance at such event are invited shall be reported in the same manner.

G. All information required to be filed pursuant to this section with the secretary of state shall be filed in that office and preserved by the secretary of state for five years from the date of filing, after which time the information shall be destroyed. The information is a public record and open to public inspection.

H. If a principal, lobbyist for compensation or designated lobbyist makes no expenditures that it would otherwise be required to report during a specified reporting period, the principal, lobbyist for compensation or designated lobbyist may sign a form under penalty of perjury prescribed by the secretary of state indicating that there were no expenditures during the specific reporting period.

I. A person or organization shall not make a gift to or an expenditure on behalf of a state officer or employee through another person or organization for the purpose of disguising the identity of the person making the gift or expenditure.

J. A principal or lobbyist or any other person acting on behalf of a principal or lobbyist shall not give to any state officer or state employee and a state officer or state employee shall not accept from a principal or lobbyist either of the following:

1. Gifts with a total value of more than \$10 during any calendar year.

2. Gifts that are designed to influence the state officer's or state employee's official conduct.

Decision No. 78040

**Credits**

Added by Laws 1994, Ch. 380, § 5. Amended by Laws 2000, Ch. 364, § 2, eff. Jan. 1, 2001; Laws 2019, Ch. 218, § 3.

A. R. S. § 41-1232.02, AZ ST § 41-1232.02

Current through legislation effective May 10, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.



Arizona Revised Statutes Annotated  
 Title 41. State Government (Refs & Annos)  
 Chapter 7. Legislature (Refs & Annos)  
 Article 8.1. Registration and Regulation of Lobbyists (Refs & Annos)

A.R.S. § 41-1232.03

§ 41-1232.03. Expenditure reporting; public bodies and public lobbyists; gifts

Effective: August 27, 2019

Currentness

**A.** Each public body shall report annually all single expenditures received by or benefitting a member of the legislature whether or not the expenditures were made in the course of lobbying. These expenditures shall be itemized separately, and each itemization shall include the date of the expenditure, the amount of the expenditure, the name of each member of the legislature receiving or benefitting from the expenditure, the category of the expenditure and the name of the designated public lobbyist or authorized public lobbyist who made the expenditure on behalf of the public body. In addition each public body shall report annually the aggregate of all expenditures of \$20 or less received by or benefitting a member of the legislature, whether or not the expenditures were made in the course of lobbying. The report shall list all expenditures by the public body made in the course of lobbying for the personal sustenance, filing fee, legal fees, employees' compensation, meals, lodging and travel of the designated public lobbyist and all authorized public lobbyists employed or retained by, and representing, the public body. The public body shall apportion expenditures that are attributable both to lobbying and to other activities of the public body and shall report only the portion attributable to lobbying. For the purpose of reporting employee compensation, a public body, on establishing a time allocation schedule for apportioned lobbying activity based on actual experience under this article, may submit after the 1993 calendar year an affidavit to the secretary of state stating the compensation attributable to lobbying for subsequent years for the designated public lobbyist and all authorized public lobbyists whose job responsibilities have not been significantly altered since the time allocation schedule was established. The report shall be filed by March 1 and shall list the annual expenditures made on behalf of the public body. If March 1 is a Saturday, Sunday or other legal holiday, the report shall be filed on the next business day.

**B.** Each designated public lobbyist shall report quarterly all single expenditures received by or benefitting a member of the legislature and incurred in the preceding calendar quarter by the designated public lobbyist, whether or not the single expenditures were made in the course of lobbying. Each designated public lobbyist's report shall also include all single expenditures incurred in the preceding calendar quarter by each authorized public lobbyist who is registered pursuant to § 41-1232.01 by the same public body that registered the designated public lobbyist. This subsection does not apply to an expenditure that was made by a designated public lobbyist or authorized public lobbyist and that was received by or benefitted an employee of a public body, if the employee is not a member or employee of the legislature or a member of the household of a member or employee of the legislature. These expenditures shall be itemized separately, and each itemization shall include the date of the expenditure, the amount of the expenditure, the name of the member or employee receiving or benefitting from the expenditure, the category of the expenditure and the public body on whose behalf the expenditure was made. If the expenditure was made by the designated public lobbyist or authorized public lobbyist and was not made on behalf of a public body, it shall be itemized separately. The quarterly report shall be filed not later than the last day of the month following the end of the calendar quarter, unless the last day of the month is a Saturday, Sunday or other legal holiday. In that case, the report shall be filed on the next business day.

Decision No. 78040

C. Each designated public lobbyist shall also report quarterly the aggregate of all expenditures of \$20 or less received by or benefitting a member of the legislature, whether or not the expenditures were made in the course of lobbying. Each designated public lobbyist's report shall also include the aggregate of all expenditures of \$20 or less that were received by or benefitted a member of the legislature and that were made by an authorized public lobbyist who is registered pursuant to § 41-1232.01 by the same public body that registered the designated public lobbyist. This subsection does not apply to an expenditure that was made by a designated public lobbyist or authorized public lobbyist and that was received by or benefitted an employee of a public body, if the employee is not a member or employee of the legislature or a member of the household of a member or employee of the legislature. The report shall list separately the aggregate of expenditures made on behalf of each public body and the aggregate not made on behalf of any public body. In the fourth calendar quarter, these expenditures shall also be listed by cumulative total for the calendar year. Each quarterly lobbyist report shall include all reportable expenditures made by any employee of the designated public lobbyist or authorized public lobbyist, regardless of whether that employee is listed as a designated public lobbyist or authorized public lobbyist on any registration filed by a public body engaging the designated public lobbyist or authorized public lobbyist. The quarterly report shall be filed not later than the last day of the month following the end of the calendar quarter, unless the last day of the month is a Saturday, Sunday or other legal holiday. In that case, the report shall be filed on the next business day.

D. The reports required by subsections A and B of this section shall identify the nature of each single expenditure according to the following categories:

1. Food or beverages.
2. Speaking engagement.
3. Travel and lodging.
4. Flowers.
5. Other expenditures.

E. Expenditures by a public body, designated public lobbyist or authorized public lobbyist for personal sustenance, family gifts, personal hospitality or those items excluded from the definition of gift pursuant to § 41-1231, paragraph 9, subdivision (a), (c), (d), (f), (g), (h), (i), (j), (k) or (l) are not required to be reported.

F. All expenditures incurred by a public body, designated public lobbyist or authorized public lobbyist in the case of special events for legislators, including parties, dinners, athletic events, entertainment and other functions, to which all members of the legislature, either house of the legislature or any committee of the legislature are invited shall be reported. Expenditures are not required to be allocated to individual legislators, but for each such event a description of the event and the date, location, name of the legislative body invited and total expenditures incurred shall be reported. Expenditures for special events held in conjunction with state, national or regional meetings of an organization or association concerned or dealing with legislative or other governmental activities to which all members or employees of the legislature in attendance at such event are invited shall be reported in the same manner.

**G.** All information required to be filed pursuant to this section with the secretary of state shall be filed in that office and preserved by the secretary of state for five years from the date of filing, after which time the information shall be destroyed. The information is a public record and open to public inspection.

**H.** If a public body or designated public lobbyist makes no expenditures that it would otherwise be required to report during a specified reporting period, the public body or designated public lobbyist may sign a form under penalty of perjury prescribed by the secretary of state indicating that there were no expenditures during the specific reporting period.

**I.** A person or organization shall not make a gift to or an expenditure on behalf of a member or employee of the legislature through another person or organization for the purpose of disguising the identity of the person making the gift or expenditure.

**J.** A public body, designated public lobbyist or authorized public lobbyist or any other person acting on behalf of a public body, designated public lobbyist or authorized public lobbyist shall not give to any member of the legislature and a member of the legislature shall not accept from a public body, designated public lobbyist or authorized public lobbyist either of the following:

1. Gifts with a total value of more than \$10 during any calendar year.
2. Gifts that are designed to influence the member's or employee's official conduct.

**K.** Subsection J of this section does not apply to gifts given by a public body, designated public lobbyist or authorized public lobbyist to an employee of a public body, if the employee is not a public official or a member of the household of a public official or if the gift is accepted on behalf of the public body and remains the property of the public body.

#### **Credits**

Added by Laws 1994, Ch. 380, § 5. Amended by Laws 2000, Ch. 364, § 3, eff. Jan. 1, 2001; Laws 2019, Ch. 218, § 4.

A. R. S. § 41-1232.03, AZ ST § 41-1232.03

Current through legislation effective May 10, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

Arizona Revised Statutes Annotated  
Title 41. State Government (Refs & Annos)  
Chapter 7. Legislature (Refs & Annos)  
Article 8.1. Registration and Regulation of Lobbyists (Refs & Annos)

A.R.S. § 41-1232.04

§ 41-1232.04. Registration; exceptions

Effective: September 13, 2013

Currentness

Sections 41-1232, 41-1232.01, 41-1232.02 and 41-1232.03 do not apply to a person if that person is acting in the following capacity:

1. A natural person who merely appears for himself before a committee of the legislature or before a state officer or employee or a state agency, board, commission or council to lobby in support of or in opposition to legislation or official action.
2. A natural person who, acting in his own behalf, sends a letter to, converses on the telephone with or has a personal conversation with a state officer or employee for the purpose of supporting or opposing any legislation or official action.
3. A duly elected or retained public official, judge or justice, a person duly appointed to an elective public office, or an appointed member of a state, county or local board, advisory committee, commission or council acting in his official capacity on matters pertaining to his office, board, advisory committee, commission or council.
4. A person who answers technical questions or provides technical information at the request of a lobbyist, designated public lobbyist, authorized public lobbyist or legislator and who makes no expenditures required to be reported by this article.
5. A person who performs professional services in drafting bills or in advising and rendering opinions to clients as to the construction and effect of proposed or pending legislation.
6. An attorney who represents clients before any court or before any quasi-judicial body.
7. A person who contacts a state officer or state employee solely for the purpose of acquiring information.
8. A natural person who is a member of an association, who is not the lobbyist for compensation, designated lobbyist or authorized lobbyist for the association and who does not make any expenditures that would otherwise be required to be reported by this article if the natural person were a lobbyist, a designated public lobbyist or an authorized public lobbyist.

**Credits**

Added as § 41-1232.02 by Laws 1991, 3rd S.S., Ch. 2, § 4. Amended by Laws 1992, Ch. 106, § 4, eff. Sept. 30, 1992, retroactively effective to June 1, 1992; Laws 1993, Ch. 146, § 3, eff. April 20, 1993. Renumbered as § 41-1232.04 and amended by Laws 1994, Ch. 380, §§ 4, 6; Laws 2009, 3rd S.S., Ch. 12, § 48. Amended by Laws 2013, Ch. 190, § 5.

A. R. S. § 41-1232.04, AZ ST § 41-1232.04

Current through legislation effective May 10, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

Arizona Revised Statutes Annotated

Title 41. State Government (Refs & Annos)

Chapter 7. Legislature (Refs & Annos)

Article 8.1. Registration and Regulation of Lobbyists (Refs & Annos)

A.R.S. § 41-1232.05

## § 41-1232.05. Lobbyist registration; handbook; requirement

Effective: April 28, 2010

Currentness

**A.** A person who is listed by a principal or public body on a registration form pursuant to § 41-1232 or 41-1232.01 as a lobbyist for compensation, designated lobbyist or designated public lobbyist shall file a lobbyist registration form with the secretary of state in a format prescribed by the secretary of state no later than 5:00 p.m. on the second Monday in January of each even numbered year and shall read a handbook containing statutes and rules governing lobbyists for compensation, designated lobbyists and designated public lobbyists, written guidelines and forms and samples for completing the lobbyist disclosure forms. A person shall file the registration at any time beginning December 1 in the odd numbered year until 5:00 p.m. on the second Monday in January in the even numbered year. The lobbyist handbook shall be written and prescribed by the secretary of state. A person who is originally listed as a lobbyist for compensation, designated lobbyist or designated public lobbyist for a month other than January shall file, within thirty days, a registration form and shall file a registration form for January of each even numbered year thereafter if the person continues to be listed as a lobbyist for compensation, designated lobbyist or designated public lobbyist.

**B.** The lobbyist registration form shall include:

1. The name of the lobbyist for compensation, designated lobbyist or designated public lobbyist.
2. The business name and address of the lobbyist for compensation, designated lobbyist or designated public lobbyist.
3. A statement that the lobbyist for compensation, designated lobbyist or designated public lobbyist has read the lobbyist handbook prescribed in subsection A of this section.

### Credits

Added as § 41-1232.03 by Laws 1991, 3rd S.S., Ch. 2, § 4, eff. June 1, 1992. Amended by Laws 1992, Ch. 106, § 5, eff. Sept. 30, 1992, retroactively effective to June 1, 1992. Renumbered as § 41-1232.05 and amended by Laws 1994, Ch. 380, §§ 4, 7. Amended by Laws 2010, Ch. 209, § 28, eff. April 28, 2010.

A. R. S. § 41-1232.05, AZ ST § 41-1232.05

Current through legislation effective May 10, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

Arizona Revised Statutes Annotated  
Title 41. State Government (Refs & Annos)  
Chapter 7. Legislature (Refs & Annos)  
Article 8.1. Registration and Regulation of Lobbyists (Refs & Annos)

A.R.S. § 41-1232.06

## § 41-1232.06. Exemption; unpaid volunteers

### Currentness

This article does not apply to expenditures made for or gifts given to members of any state agency, board, commission, committee or council who are not publicly elected and who serve without compensation provided that the expenditure or gift is not made in the course of lobbying that member. If the expenditure or gift is made in the course of lobbying, the reporting requirements of §§ 41-1232 and 41-1232.01 shall apply. Payments made to a member of any state agency, board, commission, committee or council pursuant to title 38, chapter 4, article 2<sup>1</sup> shall not be considered compensation for the purposes of this section.

### Footnotes

1 Section 38-621 et seq.

A. R. S. § 41-1232.06, AZ ST § 41-1232.06

Current through legislation effective May 10, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

Decision No. 78040



Arizona Revised Statutes Annotated

Title 41. State Government (Refs & Annos)

Chapter 7. Legislature (Refs & Annos)

Article 8.1. Registration and Regulation of Lobbyists (Refs & Annos)

A.R.S. § 41-1232.07

## § 41-1232.07. Electronic filings

Effective: August 27, 2019

Currentness

**A.** Any report or registration form that is required to be filed pursuant to this article may be filed in an electronic format that is approved by the secretary of state. The secretary of state may require that reports or registration forms be filed with an additional written or printed copy.

**B.** A report or registration form that is filed in electronic format pursuant to this section is not required to bear a notarized signature but is deemed to be filed under penalty of perjury.

**C.** An electronic filing made pursuant to this section is sufficient to comply with the filing requirements of this article if the filing is properly formatted as prescribed by this article and the information contained in the filing is complete and correct.

### Credits

Added by Laws 2000, Ch. 18, § 1. Amended by Laws 2019, Ch. 218, § 5.

A. R. S. § 41-1232.07, AZ ST § 41-1232.07

Current through legislation effective May 10, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

Arizona Revised Statutes Annotated  
Title 41. State Government (Refs & Annos)  
Chapter 7. Legislature (Refs & Annos)  
Article 8.1. Registration and Regulation of Lobbyists (Refs & Annos)

A.R.S. § 41-1232.08

§ 41-1232.08. Entertainment ban; state and political subdivisions; exceptions

Effective: September 13, 2013

Currentness

**A.** A principal, designated lobbyist, authorized lobbyist, lobbyist for compensation, public body, designated public lobbyist or authorized public lobbyist or any other person acting on that person's behalf shall not make an expenditure or single expenditure for entertainment for a state officer or state employee. A state officer or state employee shall not accept an expenditure or single expenditure for entertainment from a principal, designated lobbyist, authorized lobbyist, lobbyist for compensation, public body, designated public lobbyist or authorized public lobbyist or any other person acting on that person's behalf.

**B.** A person who for compensation attempts to influence the procurement of materials, services or construction by an agency as defined in § 41-1001, including the office of the governor, or the passage or defeat of legislation, ordinances, rules, regulations, nominations and other matters that are pending or proposed or that are subject to formal approval by the corporation commission, a county board of supervisors, a city or town governing body or a school district governing board or any person acting on that person's behalf shall not make an expenditure or single expenditure for entertainment for an elected or appointed member of the corporation commission, a county board of supervisors, a city or town governing body or a school district governing board. An elected or appointed member of the corporation commission, a county board of supervisors, a city or town governing body or a school district governing board shall not accept an expenditure or single expenditure for entertainment from a person who for compensation attempts to influence the procurement of materials, services or construction by an agency as defined in § 41-1001, including the office of the governor, or the passage or defeat of legislation, ordinances, rules, regulations, nominations and other matters that are pending or proposed or that are subject to formal approval by the corporation commission, a county board of supervisors, a city or town governing body or a school district governing board.

**C.** This section shall not apply to:

1. Entertainment in connection with a special event properly reported pursuant to this article.
2. Entertainment that is incidental to a speaking engagement.
3. The following persons while attending or participating in any sporting or cultural event or activity, sponsored by the board, district or institution, in a facility that is owned or operated by the board, district or institution:
  - (a) Employees of a school district governing board.

Decision No. 78040

(b) Employees of a community college district governing board.

(c) Employees of any institution under the jurisdiction of the Arizona board of regents.

**D.** The provisions of this article that define special events for legislators apply to special events for members of the Arizona board of regents.

**Credits**

Added as § 41-1232.07 by Laws 2000, Ch. 364, § 4, eff. Jan. 1, 2001. Renumbered as 41-1232.08. Amended by Laws 2002, Ch. 282, § 1; Laws 2013, Ch. 190, § 6.

**Notes of Decisions (2)**

A. R. S. § 41-1232.08, AZ ST § 41-1232.08

Current through legislation effective May 10, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

KeyCite Yellow Flag - Negative Treatment

Proposed Legislation

Arizona Revised Statutes Annotated  
Title 41. State Government (Refs & Annos)  
Chapter 7. Legislature (Refs & Annos)  
Article 8.1. Registration and Regulation of Lobbyists (Refs & Annos)

A.R.S. § 41-1233

## § 41-1233. Prohibited acts

Effective: September 13, 2013  
Currentness

No person shall:

1. Retain or employ another person to promote or oppose legislation for compensation contingent in whole or in part on the passage or defeat of any legislation, or the approval or veto of any legislation by the governor, and no person shall accept employment or render service for compensation on a contingent basis.
2. Lobby the legislature for compensation within one year after the person ceases to be a member of the senate or house of representatives.
3. In any manner improperly seek to influence the vote of any member of the legislature through communication with that member's employer.
4. Lobby the public body that employed the person in a capacity having a significant procurement role as defined in § 41-741 in the procurement of materials, services or construction within one year after the person ceases to be employed by the public body.

### Credits

Added by Laws 1974, Ch. 198, § 1. Amended by Laws 1994, Ch. 380, § 9; Laws 2013, Ch. 190, § 7.

A. R. S. § 41-1233, AZ ST § 41-1233

Current through legislation effective May 10, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

Decision No. 78040

Arizona Revised Statutes Annotated  
Title 41. State Government (Refs & Annos)  
Chapter 7. Legislature (Refs & Annos)  
Article 8.1. Registration and Regulation of Lobbyists (Refs & Annos)

A.R.S. § 41-1233.01

§ 41-1233.01. Disclosure

Effective: July 24, 2014  
Currentness

A person who is registered pursuant to this article or who is a designated lobbyist, lobbyist for compensation, authorized lobbyist, designated public lobbyist or authorized public lobbyist shall disclose that fact to:

1. Any legislator the person is lobbying for the first time or on any subsequent request of a legislator.
2. Any public official or employee of a public body each time that the person is lobbying for the procurement of materials, services or construction. The person also shall disclose the name of that person's client.

**Credits**

Added by Laws 1994, Ch. 380, § 11. Amended by Laws 2013, Ch. 190, § 8; Laws 2014, Ch. 145, § 4.

A. R. S. § 41-1233.01, AZ ST § 41-1233.01

Current through legislation effective May 10, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

Arizona Revised Statutes Annotated  
Title 41. State Government (Refs & Annos)  
Chapter 7. Legislature (Refs & Annos)  
Article 8.1. Registration and Regulation of Lobbyists (Refs & Annos)

A.R.S. § 41-1234

§ 41-1234. Publicly funded contract lobbyists; prohibition; definition

Effective: August 9, 2017

Currentness

**A.** Notwithstanding any other law, a state agency, office, department, board or commission and any person acting on behalf of a state agency, office, department, board or commission shall not:

1. Enter into a contract or other agreement with a person or entity for lobbying services.
2. Spend monies for any person or entity to lobby on behalf of that agency, office, department, board or commission unless that person is a state employee.

**B.** This section does not apply to any state agency, office, department, board or commission that is either:

1. Headed by one or more elected officials.
2. Exempt from title 41, chapter 23<sup>1</sup> for the purposes of contracts for professional lobbyists.

**C.** This section does not apply to the employment relationship of a lobbyist who is a state employee directly employed by a state governmental unit for whom the employee acts as a lobbyist or lobbying is part of the employee's job description.

**D.** For the purposes of this section, "state employee" has the same meaning prescribed in § 41-1231.

**Credits**

Added by Laws 2017, Ch. 145, § 1.

**Footnotes**

<sup>1</sup> Section 41-2501 et seq.

A. R. S. § 41-1234, AZ ST § 41-1234

Current through legislation effective May 10, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

Decision No. 78040

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

Decision No. 78040



Arizona Revised Statutes Annotated  
Title 41. State Government (Refs & Annos)  
Chapter 7. Legislature (Refs & Annos)  
Article 8.1. Registration and Regulation of Lobbyists (Refs & Annos)

A.R.S. § 41-1234.01

§ 41-1234.01. Contributions prohibited during session; exceptions

Effective: July 3, 2015

Currentness

**A.** While registered under this article, a principal, public body, lobbyist, designated public lobbyist or authorized public lobbyist shall not make or promise to make a campaign contribution to or solicit or promise to solicit campaign contributions for:

1. A member of the legislature when the legislature is in regular session.
2. The governor when the legislature is in regular session or when regular session legislation is pending executive approval or veto.

**B.** Subsection A of this section only prohibits campaign contributions by principals, lobbyists, designated public lobbyists or authorized public lobbyists and the solicitation of campaign contributions by principals or lobbyists during any time that the legislature is in regular session but does not prohibit principals or lobbyists from raising monies for any other purpose during the regular session of the legislature.

**C.** A member of the legislature or the governor may accept a campaign contribution that is received by a member of the legislature or the governor within three calendar days after the first day of the regular session of the legislature if the campaign contribution was mailed and postmarked before the first day of the regular legislative session.

**Credits**

Added by Laws 1991, 3rd S.S., Ch. 2, § 6, eff. June 1, 1992. Amended by Laws 1992, Ch. 106, § 8, eff. Sept. 30, 1992, retroactively effective to June 1, 1992; Laws 2015, Ch. 286, § 6.

**Notes of Decisions (3)**

A. R. S. § 41-1234.01, AZ ST § 41-1234.01

Current through legislation effective May 10, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

Arizona Revised Statutes Annotated

Title 41. State Government (Refs & Annos)

Chapter 7. Legislature (Refs & Annos)

Article 8.1. Registration and Regulation of Lobbyists (Refs & Annos)

A.R.S. § 41-1235

## § 41-1235. Spurious communications; classification

Currentness

Whoever shall transmit, utter or publish to the legislature, or to any member or members of the legislature, or any committee, officer or employee of either house of the legislature, or to any state officer, agency, board, commission or council any communication materially related to any matter within the jurisdiction of the legislature, or be a party to the preparation thereof, knowing such communication or signature thereto is false, forged, counterfeit or fictitious shall be guilty of a class 2 misdemeanor.

### Credits

Added by Laws 1974, Ch. 198, § 1. Amended by Laws 1978, Ch. 201, § 731, eff. Oct. 1, 1978.

A. R. S. § 41-1235, AZ ST § 41-1235

Current through legislation effective May 10, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

Decision No. 78040

Arizona Revised Statutes Annotated

Title 41. State Government (Refs & Annos)

Chapter 7. Legislature (Refs & Annos)

Article 8.1. Registration and Regulation of Lobbyists (Refs & Annos)

A.R.S. § 41-1236

§ 41-1236. Reports and statements under penalty of perjury

Effective: August 27, 2019

Currentness

All reports and statements required under this article shall be made under penalty of perjury.

**Credits**

Added by Laws 1974, Ch. 198, § 1. Amended by Laws 2019, Ch. 218, § 6.

A. R. S. § 41-1236, AZ ST § 41-1236

Current through legislation effective May 10, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

Decision No. 78040

A.R.S. § 41-1237

## Currentness

Arizona Revised Statutes Annotated  
Title 41. State Government (Refs & Annos)  
Chapter 7. Legislature (Refs & Annos)  
Article 8.1. Registration and Regulation of Lobbyists (Refs & Annos)

A.R.S. § 41-1237.01

§ 41-1237.01. Compliance orders; injunctive relief; civil penalties

Currentness

**A.** If the secretary of state has reasonable cause to believe that a person is violating any provision of this article, the secretary of state shall notify the attorney general and the attorney general may serve on the person an order requiring compliance with that provision. The order shall state with reasonable particularity the nature of the violation and shall require compliance within twenty days from the date of issuance of the order. The alleged violator has twenty days from the date of issuance of the order to request a hearing pursuant to chapter 6, article 10 of this title.<sup>1</sup>

**B.** If a person does not request a hearing and fails to take corrective action within the time specified in the compliance order issued pursuant to subsection A of this section or if, after the hearing, the person fails to take corrective action in compliance with an order issued after the hearing within the time specified in the order, the attorney general shall issue an order assessing a civil penalty of not more than one thousand dollars. The person alleged to have violated the compliance order has thirty days from the date of issuance of the order assessing the civil penalty to request a hearing pursuant to chapter 6, article 10 of this title.

**C.** Except as provided in § 41-1092.08, subsection H, any party aggrieved by a final order or decision of the attorney general may appeal to the superior court pursuant to title 12, chapter 7, article 6.

**Credits**

Added by Laws 1991, 3rd S.S., Ch. 2, § 7, eff. June 1, 1992. Amended by Laws 1997, Ch. 221, § 192; Laws 2000, Ch. 113, § 172.

**Footnotes**

<sup>1</sup> Section 41-1092 et seq.

A. R. S. § 41-1237.01, AZ ST § 41-1237.01

Current through legislation effective May 10, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

Arizona Revised Statutes Annotated  
Title 41. State Government (Refs & Annos)  
Chapter 7. Legislature (Refs & Annos)  
Article 8.1. Registration and Regulation of Lobbyists (Refs & Annos)

A.R.S. § 41-1238

### § 41-1238. Limitations

## Currentness

No provision of this article shall be construed, interpreted or enforced so as to limit, impair, abridge or destroy any person's right of freedom of expression and participation in government processes, or freedom of the press.

## Credits

Added by Laws 1974, Ch. 198, § 1.

A. R. S. § 41-1238, AZ ST § 41-1238

Current through legislation effective May 10, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works

Decision No. 78040

KeyCite Yellow Flag - Negative Treatment

Proposed Legislation

Arizona Revised Statutes Annotated

Title 41. State Government (Refs &amp; Annos)

Chapter 7. Legislature (Refs &amp; Annos)

Article 8.1. Registration and Regulation of Lobbyists (Refs &amp; Annos)

A.R.S. § 41-1239

## § 41-1239. Duties of secretary of state

Currentness

**A.** The secretary of state shall:

1. Prescribe and publish the registration and registration amendment forms and the annual and quarterly expenditure forms, handbooks and rules necessary to carry out the provisions of this article.
2. Refer to the attorney general or county attorney for investigation any matter which the secretary of state has reason to believe constitutes a violation of any of the provisions of this article.
3. Provide for the cross-referencing of the registration required by §§ 41-1232 and 41-1232.01 so that each lobbyist authorized by a principal pursuant to § 41-1232, subsection A and each public lobbyist authorized by a public body pursuant to § 41-1232.01, subsection A shall be identified with such principal.
4. Advise incumbents and nonincumbent candidates regarding campaign finance laws and public officer reporting and disclosure laws. At the request of the person asking for advice, the secretary of state shall log the request and the response.
5. Compile and issue an annual report of all expenditures reported by principals, public bodies, lobbyists and public lobbyists. The annual report shall accurately summarize all expenditures for lobbying but shall not double report expenditures by a lobbyist that were reimbursed and reported by a principal or public body. The report shall list the name of each principal or public body along with the name of each lobbyist or public lobbyist that is listed on the principal's registration statement.

**B.** The secretary of state may adopt rules regarding initiative, referendum and recall. Rules adopted pursuant to this subsection apply to statewide and county initiatives, referenda and recalls.

**Credits**

Added by Laws 1978, Ch. 214, § 4, eff. Jan. 1, 1979. Amended by Laws 1991, Ch. 241, § 7, eff. June 12, 1991; Laws 1991, 3rd S.S., Ch. 1, § 36, eff. Nov. 4, 1992; Laws 1991, 3rd S.S., Ch. 2, § 8, eff. June 1, 1992; Laws 1992, Ch. 319, § 37, eff. Nov. 4, 1992; Laws 1994, Ch. 380, § 12; Laws 2000, Ch. 364, § 5, eff. Jan. 1, 2001.

Decision No. 78040



A. R. S. § 41-1239, AZ ST § 41-1239

Current through legislation effective May 10, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works

C. Pursuant to the provisions of section 41-1279.04, Arizona Revised Statutes, the auditor general may examine all records necessary to conduct the study required by this section. In addition, the university physicians, inc., shall provide the auditor general with the following by a date specified by the auditor general:

1. The annual audit reports, including information and supporting documents used to prepare the audit reports, provided to the board of regents for the medical services plan contract of 1985 for the period of time covering the fiscal years ending June 30, 1990 and June 30, 1991.

2. The complete audit reports, including information and supporting documents used to prepare the audit reports, for the medical services plan contract of 1985 for the period of time covering the fiscal years ending June 30, 1990 and June 30, 1991.

3. Any other information, documents, or property deemed appropriate by the auditor general in order to conduct the study as provided in this section.

**Sec. 2. Appropriation; purpose**

The sum of nine thousand dollars is appropriated from the state general fund to the office of the auditor general to allow the auditor general to conduct the study prescribed by this act.

**Sec. 3. Emergency**

This act is an emergency measure that is necessary to preserve the public peace, health or safety and is operative immediately as provided by law.

Approved by the Governor, June 2, 1992.

Filed in the Office of the Secretary of State, June 2, 1992.

## PUBLIC EMPLOYEES—ETHICS

### CHAPTER 134

S.B. 1437

AN ACT AMENDING TITLE 38, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 3.2; AMENDING SECTION 41-192, ARIZONA REVISED STATUTES; RELATING TO ETHICS.

*Be it enacted by the Legislature of the State of Arizona:*

**Section 1. Declaration of public policy**

It is the public policy of this state that all public officers and employees of this state shall discharge their public duties in full compliance with applicable laws concerning ethical conduct. To ensure that state public officers and employees know the standards of conduct against which their actions will be measured, information shall be provided to state departments, agencies, boards, commissions and councils on compliance with laws on ethics including those relating to bribery, conflicts of interest, contracting with the government, disclosure of confidential information, discrimination, nepotism, financial disclosure, gifts and extra compensation, incompatible employment, political activity by public employees, public access to records, open meeting laws, conduct after leaving one's position with the government and misuse of public resources for personal gain.

Sec. 2. Title 38, Arizona Revised Statutes, is amended by adding chapter 3.2, to read:

Decision No. 78040

Additions are indicated by underline; deletions by ~~strikeout~~

499  
APP-253

## CHAPTER 3.2

PUBLIC SERVICE ORIENTATION PROGRAMSARTICLE 1. GENERAL PROVISIONS**§ 38-551. Definitions**

In this chapter, unless the context otherwise requires:

1. "Public service orientation programs" means educational training about laws relating to the proper conduct of public business, including laws relating to bribery, conflicts of interest, contracting with the government, disclosure of confidential information, discrimination, nepotism, financial disclosure, gifts and extra compensation, incompatible employment, misuse of public resources for personal gain, political activity by public employees, public access to records, open meeting laws and conduct after leaving one's position with the government.
2. "State officer" means all individuals elected or appointed to the legislature, a statewide elective position, or a state agency, department, board, commission, committee or council.

**§ 38-552. Public service orientation programs; implementation**

A. The state shall conduct public service orientation programs so that all state officers and employees receive such training at least once every two years.

B. Public service orientation programs shall be administered as follows:

1. The attorney general shall implement the public service orientation program for all individuals elected or appointed to a statewide elective position and appointed to head a state agency or department.
2. Each house of the legislature shall implement the public service orientation program for members of its respective house and its employees.
3. The department of administration shall implement the public service orientation program for appointees and volunteers to all state agencies, departments, boards, commissions, committees and councils and for all other state employees.

Sec. 3. Section 41-192, Arizona Revised Statutes, is amended to read:

**§ 41-192. Powers and duties of attorney general; restrictions on state agencies as to legal counsel; exceptions**

A. The attorney general shall have charge of and direct the department of law and shall serve as chief legal officer of the state. The attorney general shall:

1. Be the legal advisor of the departments of this state and render such legal services as the departments require.
2. Establish administrative and operational policies and procedures within his department.
3. Approve long-range plans for developing departmental programs therein, and coordinate the legal services required by other departments of this state or other state agencies.
4. Represent school districts and governing boards of school districts in any lawsuit involving a conflict of interest with other county offices.
5. Represent political subdivisions, school districts and municipalities in suits to enforce state or federal statutes pertaining to antitrust, restraint of trade or price-fixing activities or conspiracies, provided that the attorney general shall notify in writing such political subdivision, school districts and municipalities of his intention to bring any such action on its behalf. At any time within thirty

days after such notification, such political subdivision, school districts and municipalities may, by formal resolution of its governing body, withdraw the authority of the attorney general to bring the intended action on its behalf.

6. In any action brought by the attorney general pursuant to state or federal statutes pertaining to antitrust, restraint of trade, or price-fixing activities or conspiracies for the recovery of damages by this state or any of its political subdivisions, school districts or municipalities, in addition to his other powers and authority, the attorney general on behalf of this state may enter into contracts relating to the investigation and prosecution of such action with any other party plaintiff who has brought a similar action for the recovery of damages and with whom the attorney general finds it advantageous to act jointly or to share common expenses or to cooperate in any manner relative to such action. In any such action, notwithstanding any other laws to the contrary, the attorney general may undertake, among other things, to render legal services as special counsel, or to obtain the legal services of special counsel from any department or agency of the United States, of this state, or any other state, or any department or agency thereof, any county, city, public corporation or public district in this state or in any other state, that has brought or intends to bring a similar action for the recovery of damages, or their duly authorized legal representatives in such action.

7. Organize the civil rights division within the department of law and administer such division pursuant to the powers and duties provided in chapter 9 of this title.

8. Compile, publish and distribute to all state agencies, departments, boards, commissions and councils, and to other persons and government entities on request, at least every ten years, the Arizona agency handbook that sets forth and explains the major state laws that govern state agencies, including information on the laws relating to bribery, conflicts of interest, contracting with the government, disclosure of public information, discrimination, nepotism, financial disclosure, gifts and extra compensation, incompatible employment, political activity by employees, public access and misuse of public resources for personal gain. A supplement to the handbook reflecting revisions to the information contained in the handbook shall be compiled and distributed by the attorney general as deemed necessary.

B. Except as otherwise provided by law, the attorney general may:

1. Organize the department into such bureaus, subdivisions or units as he deems most efficient and economical, and consolidate or abolish them.

2. Adopt rules for the orderly conduct of the business of the department.

3. Employ and assign assistant attorneys general and other employees necessary to perform the functions of the department. Not later than October 31, 1984, the attorney general shall submit to the joint legislative budget committee a comprehensive performance pay plan for all assistant attorneys general. Notwithstanding the provisions of section 38-611, all monies appropriated for salary adjustments for assistant attorneys general to become effective on or after January 1, 1985 shall be allocated in accordance with the performance pay plan as approved by the joint legislative budget committee. If the joint legislative budget committee does not approve a performance pay plan by December 31, 1984, assistant attorneys general shall receive salary adjustments pursuant to section 38-611.

4. Compromise or settle any action or claim by or against this state or any department, board or agency thereof. Where such compromise or settlement involves a particular department, board or agency of this state, the compromise or settlement shall be first approved by such department, board or agency.

Decision No. 78040

Additions are indicated by underline; deletions by ~~strikeout~~

501  
APP-255

Where no department or agency is named or otherwise materially involved, the approval of the governor shall be first obtained.

5. Charge reasonable fees for distributing official publications, including attorney general legal opinions and the Arizona agency handbook. The fees received shall be deposited in a separate account and are available for expenditure by the attorney general solely for the production of official publications.

C. Assistants and employees in any legal division subject to a merit system prior to March 6, 1953 shall remain subject thereto.

D. The powers and duties of a bureau, subdivision or unit shall be limited to those assigned by law to the department.

E. Notwithstanding any law to the contrary, except as provided in subsections F and G of this section, no state agency other than the attorney general shall employ legal counsel or make an expenditure or incur an indebtedness for legal services, but the following are exempt from this section:

1. The director of water resources.
2. The residential utility consumer office.
3. The industrial commission.
4. The Arizona board of regents.
5. The auditor general.
6. The corporation commissioners and the corporation commission other than the securities division.

F. If the attorney general determines that he is disqualified from providing judicial or quasi-judicial legal representation or legal services on behalf of any state agency in relation to any matter, the attorney general shall give written notification to the state agency affected. If the agency has received written notification from the attorney general that he is disqualified from providing judicial or quasi-judicial legal representation or legal services in relation to any particular matter, the state agency is authorized to make expenditures and incur indebtedness to employ attorneys to provide the representation or services.

G. If the attorney general and the director of the department of agriculture cannot agree on the final disposition of a pesticide complaint under section 3-368 or if the attorney general and the director determine that a conflict of interest exists as to any matter or if the attorney general and the director determine that the attorney general does not have the expertise or attorneys available to handle a matter, the director is authorized to make expenditures and incur indebtedness to employ attorneys to provide representation or services to the department with regard to that matter.

H. Any department or agency of this state authorized by law to maintain a legal division or incur expenses for legal services from funds derived from sources other than the general revenue of the state, or from any special or trust fund, shall pay from such source of revenue or special or trust fund into the general fund of the state, to the extent such funds are available and upon a reimbursable basis for warrants drawn upon the state treasurer, the amount actually expended by the department of law within legislative appropriations for such legal division or legal services.

I. Appropriations made pursuant to subsection H of this section shall not be subject to lapsing provisions otherwise provided by law. Services for departments or agencies to which this subsection and subsection G of this section are applicable shall be performed by special or regular assistants to the attorney general.

J. Monies in the special fund authorized under subsection B, paragraph 5 of this section that at any time are in ~~Decision No.~~ 78040 thousand dollars shall



immediately revert to the state general fund. Monies in such fund of fifteen thousand dollars or less are exempt from the lapsing provision of section 35-190, except that monies in such fund at the close of the fiscal year in excess of five thousand dollars shall revert to the state general fund.

Approved by the Governor, June 2, 1992.

Filed in the Office of the Secretary of State, June 2, 1992.

## TAXATION—TRANSACTION PRIVILEGE, EXCISE AND USE TAXES

### CHAPTER 135

S.B. 1442

AN ACT AMENDING SECTIONS 42-1310.01, 42-1310.11, 42-1310.13 AND 42-1409, ARIZONA REVISED STATUTES; RELATING TO TRANSACTION PRIVILEGE, AFFILIATED EXCISE AND USE TAXES.

*Be it enacted by the Legislature of the State of Arizona:*

Section 1. Section 42-1310.01, Arizona Revised Statutes, is amended to read:

#### § 42-1310.01. Retail classification; definitions

A. The retail classification is comprised of the business of selling tangible personal property at retail. The tax base for the retail classification is the gross proceeds of sales or gross income derived from the business. The tax imposed on the retail classification pursuant to this section does not apply to the gross proceeds of sales or gross income from:

1. Professional or personal service occupations or businesses which involve sales or transfers of tangible personal property only as inconsequential elements.
2. Services rendered in addition to selling tangible personal property at retail.
3. Sales of warranty or service contracts. The storage, use or consumption of tangible personal property provided under the conditions of such contracts is subject to tax under section 42-1408.01.
4. Sales of tangible personal property by any nonprofit organization organized and operated exclusively for charitable purposes and recognized by the department and the United States internal revenue service as such a nonprofit organization for charitable purposes.
5. Sales to persons engaged in business classified under the restaurant classification of articles used by human beings for food, drink or condiment, whether simple, mixed or compounded.
6. Business activity by a person which is properly included in any other business classification by that person which is taxable under this article.
7. The sale of stocks and bonds.
8. Drugs and medical oxygen on the prescription of a member of the medical, dental or veterinarian profession who is licensed by law to administer such substances.
9. Prosthetic appliances as defined in section 23-501 prescribed or recommended by a ~~physician, dentist or other~~ health professional licensed pursuant to title 32, chapter 7, 8, 11, 13, 14, 15, 16, or 17 ~~Decision No. 78040~~

Arizona Administrative Code

Title 2. Administration

Chapter 5. Department of Administration -- State Personnel System

Subchapter A. Covered and Uncovered Employees

Article 5. Conditions of Employment

A.A.C. R2-5A-501

## R2-5A-501. Standards of Conduct

### Currentness

**A. Required conduct.** A state employee shall at all times:

1. Comply with federal and state laws and rules, statewide policies and employee handbook, and agency policies and directives;
2. Maintain high standards of honesty, integrity, and impartiality, free from personal considerations, or favoritism;
3. Be courteous, considerate, and prompt in interactions with and serving the public and other employees; and
4. Conduct himself or herself in a manner that will not bring discredit or embarrassment to the state.

**B. Prohibited conduct.** A state employee shall not:

1. Use his or her official position for personal gain, or attempt to use, or use, confidential information for personal advantage;
2. Permit himself or herself to be placed under any kind of personal obligation that could lead a person to expect official favors;
3. Perform an act in a private capacity that may be construed to be an official act;
4. Accept or solicit, directly or indirectly, anything of economic value as a gift, gratuity, favor, entertainment, or loan that is, or may appear to be, designed to influence the employee's official conduct. This provision shall not prohibit acceptance by an employee of food, refreshments, or unsolicited advertising or promotional material of nominal value;
5. Directly or indirectly use or allow the use of state equipment or property of any kind, including equipment and property leased to the state, for other than official activities unless authorized by written agency policy or as otherwise allowed by these rules;

Decision No. 78040



6. Inhibit a state employee from joining or refraining from joining an employee organization; or

7. Take disciplinary or punitive action against another employee that impedes or interferes with that employee's exercise of any right granted under the law or these rules.

C. Consequences of non-compliance. An employee who violates the standards of conduct requirements listed in subsection (A) or (B) may be disciplined or separated from state employment. Any such actions involving a covered employee shall be in accordance with the rules in Subchapter B, Article 3.

#### Credits

Section made by exempt rulemaking at 18 A.A.R. 2782, effective September 29, 2012 (Supp. 12-4). Amended by exempt rulemaking at 19 A.A.R. 717 effective April 13, 2013 (Supp. 13-1).

Current through rules published in Arizona Administrative Register Volume 27, Issue 21, May 21, 2021. Some sections may be more current, see credits for details.

A.A.C. R2-5A-501, AZ ADC R2-5A-501

## Arizona Administrative Code

## Title 14. Public Service Corporations; Corporations and Associations; Securities Regulation

## Chapter 3. Corporation Commission - Rules of Practice and Procedure

## Article 1. Rules of Practice and Procedure Before the Corporation Commission (Refs &amp; Annos)

## A.A.C. R14-3-103

## R14-3-103. Parties

## Currentness

**A. Classification of parties.** Parties to any proceeding before the Commission shall consist of and shall be designated "Applicant", "Complainant", "Respondent", "Intervenor", or "Protestant" according to the nature of the proceedings and the relationship of the party thereto.

**B. Applicant.** Any person requesting a certificate, permit, other authority or any affirmative relief other than a complainant shall be designated "Applicant".

**C. Complainant.** Any person complaining pursuant to any statute or any rule or order of the Commission shall be designated "Complainant".

**D. Respondent.** Any person against whom a complaint or petition is filed or any person who may be subject to having any schedule, rate or tariff forfeited or revoked by the Commission, shall be designated as "Respondent".

**E. Intervenor.** Any person permitted to intervene in any proceeding shall be designated "Intervenor".

**F. Protestant.** Any person permitted to protest in any proceeding shall be designated "Protestant".

**G. Two or more complainants.** Two or more complainants may join in one complaint if their respective complaints are against the same respondent or respondents and involve substantially the same matter or thing and a like state of facts.

**H. Multiple respondents.** If complaint be made of tariffs, rates, fares, charges, regulations or practices involving more than one public service corporation, all such public service corporations shall be made respondents.

**I. Receivers and trustees.** The receiver or trustee of any person subject to the orders of this Commission shall be a party in any proceeding affecting such person and shall be designated as herein provided.

**Credits**

Former Section R14-3-103 repealed, new Section R14-3-103 adopted effective December 17, 1975 (Supp. 75-2).

Current through rules published in Arizona Administrative Register Volume 27, Issue 21, May 21, 2021. Some sections may be more current, see credits for details.

A.A.C. R14-3-103, AZ ADC R14-3-103

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## Arizona Administrative Code

Title 14. Public Service Corporations; Corporations and Associations; Securities Regulation

Chapter 3. Corporation Commission - Rules of Practice and Procedure

Article 1. Rules of Practice and Procedure Before the Corporation Commission (Refs &amp; Annos)

A.A.C. R14-3-113

## R14-3-113. Unauthorized communications

## Currentness

**A. Purpose.** It is the purpose of this rule to assist the members of the Arizona Corporation Commission and its employees in avoiding the possibility of prejudice, real or apparent, to the public interest in proceedings before the Commission and hearings before the Arizona Power Plant and Transmission Line Siting Committee.

**B. Application.** The provisions of this rule apply from the time a contested matter is set for public hearing before the Commission and from the time a notice of siting hearing is published pursuant to R14-3-208(A). The provisions of this rule do not apply to rulemaking proceedings.

**C. Prohibitions.**

1. No person shall make or cause to be made an oral or written communication, not on the public record, concerning the substantive merits of a contested proceeding or siting hearing to a commissioner or commission employee involved in the decision-making process for that proceeding or siting hearing.

2. No commissioner or commission employee involved in the decision-making process of a contested proceeding or siting hearing shall request, entertain, or consider an unauthorized communication concerning the merits of the proceeding or siting hearing.

3. The provisions of this rule shall not prohibit:

- a. Communications regarding procedural matters;
- b. Communications regarding any other proceedings;
- c. Intra-agency or non-party communications regarding purely technical and legal matters;
- d. Comments from the general public;
- e. Communications among hearing officers, non-party staff and commissioners.

Decision No. 78040

**D. Remedy.**

1. A commissioner or commission employee who receives an oral or written offer of any communication prohibited by this rule must decline to receive such communication and will explain that the matter is pending for determination and that all communication regarding it must be made on the public record. If unsuccessful in preventing such communications, the recipient will advise the communicator that the communication will not be considered, a brief signed statement setting forth the substance of the communication and the circumstances under which it was made, will be prepared, and the statement will be filed in the public record of the case or proceeding.

2. Any person affected by an unauthorized communication will have an opportunity to rebut on the record any facts or contentions contained in the communication.

3. If a party to a contested proceeding or siting hearing makes an unauthorized communication, the party may be required to show cause why its claim or interest in the proceeding or siting hearing should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation.

**Credits**

Adopted effective January 3, 1986 (Supp. 86-1). Amended by final rulemaking at 12 A.A.R. 4181, effective December 25, 2006 (Supp. 06-4).

Current through rules published in Arizona Administrative Register Volume 27, Issue 21, May 21, 2021. Some sections may be more current, see credits for details.

A.A.C. R14-3-113, AZ ADC R14-3-113

**CODE OF ETHICS FOR MEMBERS OF THE  
NATIONAL ASSOCIATION OF  
REGULATORY UTILITY COMMISSIONERS**

**CANON I**

**A Commissioner Should Uphold the Integrity of the Commission:**

An honorable Commissioner of high integrity is indispensable to justice in discharging the responsibilities of the Commission. A Commissioner should participate in establishing, maintaining and enforcing, and should observe high standards of conduct so that the integrity and honor of the Commission may be preserved. The provisions of this Code of Ethics should be construed and applied to further that objective.

**CANON II**

**A Commissioner Should Avoid Impropriety and the Appearance of Impropriety in All Activities:**

A Commissioner should respect and comply with the law and should conduct himself or herself at all times in a manner that promotes public confidence in the integrity and impartiality of the Commission. A Commissioner should not own any stock or securities or other financial interest in any company regulated by the Commission.

A Commissioner should not allow family, social or other relationships to influence his or her official conduct or judgment. A Commissioner should not lend the prestige of office to advance the private interests of others nor should he or she convey or permit others to convey the impression that they are in a special position to influence him or her.

**CANON III**

**A Commissioner Should Perform the Duties of Office Impartially and Diligently:**

The official duties of a Commissioner take precedence over all other activities. A Commissioner's duties include all the duties of office prescribed by law. In the performance of these duties, the following standards apply:

- (1) A Commissioner should be faithful to and constantly strive to improve his or her competence in regulatory principles. He or she should be unswayed by partisan interests, public clamor, or fear of criticism.
- (2) A Commissioner should maintain order and decorum in the proceedings before him or her.
- (3) A Commissioner should be patient, dignified and courteous to litigants, witnesses, lawyers, and others with whom the Commission deals in an official capacity, and should require similar conduct of lawyers, staff, and others subject to the Commissioner's direction and control.
- (4) A Commissioner should afford to every person who is legally interested in a proceeding, or his or her lawyer, full right to be heard according to law.
- (5) A Commissioner should diligently discharge his or her administrative responsibilities, maintain professional confidence in Commission administration, and facilitate the

performance of the administrative responsibilities of other Commissioners and staff officials.

(6) A Commissioner should disqualify himself or herself in a proceeding in which his or her impartiality might reasonably be questioned, including, but not limited to, instances where:

- (a) The Commissioner has a personal bias or prejudice concerning a party;
- (b) The Commissioner has served as a lawyer or representative in the matter in controversy, or a lawyer with whom he or she previously practiced law served during such association as a lawyer or representative concerning the matter;
- (c) The Commissioner knows that he or she individually or as a fiduciary, or his or her spouse or minor child residing in his or her household, has a financial interest in the subject matter in controversy, or is a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding.

(7) For purposes of this section:

- (a) "Fiduciary" includes such relationships as executor, administrator, trustee and guardian;
- (b) "Financial interest" means ownership of a legal or equitable interest, however small, or a relationship as director, advisor, or other active participant in the affairs of a party, except that:
  - (i) Ownership in a mutual or common investment fund that holds securities is not a "financial interest" in such securities unless the Commissioner participates in the management of the fund;
  - (ii) An office in an educational, religious, charitable, fraternal, or civic organization is not a "financial interest" in securities held by that organization;
  - (iii) The proprietary interest of a policy holder in a mutual insurance company, of a depositor in a mutual savings association, or a similar proprietary interest, is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest.

#### **CANON IV**

##### **A Commissioner May Engage in Activities to Improve Regulation and Administration:**

A Commissioner, subject to the proper performance of his or her duties, may engage in the following activities, and in doing so, he or she does not cast doubt on his or her capacity to decide impartially any issue that may come before the Commission:

- (1) The Commissioner may speak, write, lecture, teach, and participate in other activities concerning regulation and the administration of Commission business.
- (2) The Commissioner may appear at a public hearing before an executive or legislative body or official.

#### **CANON V**

##### **A Commissioner Should Regulate His or Her Outside Activities to Minimize the Risk of Conflict:**

By way of illustration, but not to be construed as excluding matters not covered:



(1) A Commissioner may write, lecture, teach, and speak on non-utility subjects and engage in arts, sports, and other social and recreational activities;

(2) A Commissioner may participate in civic and charitable activities that do not reflect adversely upon his or her impartiality or interfere with the performance of his or her official duties.

A Commissioner should refrain from financial and business dealing that tend to reflect adversely on his or her impartiality, interfere with the proper performance of his or her official duties, exploit his or her position, or involve him or her in frequent transactions with persons likely to come before the Commission.

Neither a Commissioner nor a member of his or her family residing in his or her household should accept a gift, bequest, favor, or loan from anyone except as follows:

(1) Instances in which the interests of the public are served by participation of the Commissioner such as widely attended luncheon meetings, dinner meetings, or similar gatherings sponsored by industrial, technical, and professional associations for the discussion of matters of mutual interest of the Commission and in the performance of his or her duties;

(2) A loan from a lending institution in its regular course of business on the same terms generally available to persons who are not Commissioners;

(3) A Commissioner or a member of his or her family residing in his or her household may accept any other gift, bequest, favor or loan if the donor is not a party or other person whose special interest may come or are likely to ever come before the Commissioner.

Adopted by the 89th NARUC Annual Convention on November 17, 1977 (**Convention Proceedings**, pages 315-318)

# ARIZONA CODE OF CONDUCT FOR JUDICIAL EMPLOYEES

## 2010

Arizona Supreme Court  
Administrative Order 2010-13

Arizona Code of Judicial  
Administration § 1-303

Effective  
February 1, 2010

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:

ARIZONA CODE OF JUDICIAL  
ADMINISTRATION § 1-303:  
CODE OF CONDUCT FOR JUDICIAL  
EMPLOYEES

Administrative Order  
No. 2010 - 13

The above-captioned provision having come before the Arizona Judicial Council on December 16, 2009, and having been approved and recommended for adoption,

Therefore, pursuant to Article VI, Section 3, of the Arizona Constitution,

IT IS ORDERED that the above captioned provision, attached hereto, is adopted as a section of the Arizona Code of Judicial Administration replacing Administrative Order No. 97-41.

IT IS FURTHER ORDERED that this provision shall be effective on and after February 1, 2010.

Dated this 13th day of January, 2010.

REBECCA WHITE BERCH  
Chief Justice

**ARIZONA CODE OF JUDICIAL ADMINISTRATION**

**Part 1: Judicial Branch Administration**

**Chapter 3: Judicial Officers and Employees**

**Section 1-303: Code of Conduct for Judicial Employees**

**A. Contents**

- A. Contents
- B. Purpose and Intent
- C. Terminology
- D. Conduct Rules and Comments

**Canon 1. A judicial employee shall uphold and promote the independence, integrity, and impartiality of the judiciary and shall avoid impropriety and the appearance of impropriety.**

- Rule 1.1 Compliance with the Law
- Rule 1.2 Promoting Confidence in the Judiciary
- Rule 1.3 Abuse of Position

**Canon 2. A judicial employee shall perform the duties of judicial employment impartially, competently, and diligently.**

- Rule 2.1 Giving Priority to Ethical Duties
- Rule 2.2 Impartiality and Fairness
- Rule 2.3 Bias, Prejudice, and Harassment
- Rule 2.4 External Influences on Court Duties
- Rule 2.5 Competence, Diligence, and Cooperation
- Rule 2.6 Assistance to Litigants
- Rule 2.7 Reserved
- Rule 2.8 Professionalism
- Rule 2.9 Communication with Judges
- Rule 2.10 Statements on Pending and Impending Cases
- Rule 2.11 Personal Interests
- Rule 2.12 Reserved
- Rule 2.13 Employment of Relatives
- Rule 2.14 Disability and Impairment
- Rule 2.15 Duty to Report

**Canon 3. A judicial employee shall conduct activities outside of judicial employment to minimize the risk of conflict with the obligations of judicial employment.**

- Rule 3.1 Outside Activities in General
- Rule 3.2 Use of Nonpublic Information
- Rule 3.3 Solicitation for Outside Activities
- Rule 3.4 Gifts and Extra Compensation
- Rule 3.5 Reimbursement of Expenses and Waivers of Fees or Charges

**Canon 4. A judicial employee or candidate for judicial department office shall not engage in political or campaign activity that is inconsistent with the independence, integrity, or impartiality of the judiciary.**

- Rule 4.1 General Activities
- Rule 4.2 Personal Staff, Courtroom Clerks, and Managers
- Rule 4.3 Elective Judicial Department Office
- Rule 4.4 Elective Office in General
- Rule 4.5 Workplace Activity
- Rule 4.6 Political Pressure
- Rule 4.7 Judicial Campaign Activity
- Rule 4.8 Political Discrimination

**B. Purpose and Intent.**

An independent, fair and impartial judiciary is indispensable to our system of justice. The United States legal system is based upon the principle that an independent, impartial, and competent judiciary, composed of men and women of integrity, will interpret and apply the law that governs our society. Thus, the judiciary plays a central role in preserving the principles of justice and the rule of law. Inherent in all the rules contained in this code are the precepts that judicial employees, individually and collectively, must respect and honor judicial employment as a public trust and strive to maintain and enhance confidence in the legal system.

Judicial employees should maintain the dignity of the judiciary at all times, and avoid both impropriety and the appearance of impropriety. They should aspire at all times to conduct that ensures the greatest possible public confidence in their independence, impartiality, integrity, and competence.

This code establishes uniform standards for the ethical conduct of judicial department officials, not covered by the Code of Judicial Conduct, and judicial employees. It is not intended to be exhaustive as persons governed by this code are also governed in their professional and personal conduct by personnel policies, merit rules and general or special ethical standards. It is intended to complement the Code of Judicial Conduct that governs the conduct of judges and should be interpreted in a manner that is consistent with that code. The minimum standards contained in this code do not preclude the adoption of more rigorous standards by law, court order or local rule. Violations of this code shall be enforced locally and in the same manner as violations of local personnel rules that apply to judicial employees.

**C. Terminology**

"**Canon**" means a fundamental principle governing the conduct of judicial employees. The broad statement of principle appearing before each major section of the code is the canon. There are four canons in this code.

**"Court managers"** means high-level administrative staff who work in such close proximity to judges that their actions, decisions or conduct might be viewed as the official acts or positions of the judiciary. In the superior, municipal and justice courts, court managers include court administrators, chief probation officers, juvenile court directors, and any other similar staff designated by the clerk of the superior court, presiding judge, chief judge or chief justice of each court, but not the elected clerks of court themselves. In the appellate courts, court managers include clerks of the court, chief staff attorneys, the administrative director, deputy director, division directors and other staff designated by the chief justice or chief judges.

#### **Comment**

The actual duties and reporting relationship of a court manager varies considerably from position to position and from court to court, so the important consideration is what the court manager does and not just the title of the position. Court managers who do not act as court administrators and do not speak for the court as a whole may not be subject to the same limitations as the court's top administrator. It is the responsibility of the clerk of the superior court and the presiding judge, chief judge or chief justice of each court to determine which local court managers are included within the definition for their court.

**"Courtroom clerks"** means a staff person of the elected clerk of court, the chief clerk or a judge of a justice or municipal court, who works regularly the courtroom with a judge.

#### **Comment**

A courtroom clerk is staff of the elected clerk of the superior court or works under the supervision of the chief clerk or a judge of a justice or municipal court. The courtroom clerk works with a particular judge or on a particular calendar as assigned. Due to the close association with a judge, a courtroom clerk's actions and comments might be attributed to the judge.

**"Domestic partner"** means a person with whom another person maintains a household and an intimate relationship, other than a person to whom he or she is legally married.

**"Economic interest"** means ownership of more than a de minimis or insignificant legal or equitable interest and is further defined, for purposes of compliance with state law, in A.R.S. § 38-502(11). Except for situations in which the judicial employee participates in the management of such a legal or equitable interest, or the interest could be substantially affected by the outcome of a proceeding in which the judicial employee participates, it does not include:

- (1) an interest in the individual holdings within a mutual or common investment fund;
- (2) an interest in securities held by an educational, religious, charitable, fraternal, or civic organization in which the judicial employee or the judicial employee's spouse,

domestic partner, parent, or child serves as a director, an officer, an advisor, or other participant;

(3) a deposit in a financial institution or deposits or proprietary interests the judicial employee may maintain as a member of a mutual savings association or credit union, or similar proprietary interests; or

(4) an interest in the issuer of government securities held by the judicial employee.

**“Fiduciary”** includes relationships such as executor, administrator, trustee, or guardian.

**“Impartial,” “impartiality,” and “impartially”** mean absence of bias or prejudice in favor of, or against, particular parties or classes of parties, in communication or conduct as well as maintenance of neutrality concerning issues that may come before a judge.

**“Impending”** is a matter that is imminent or expected to occur in the near future.

**“Incumbent”** means the person who currently holds an elected office by election or appointment to that office.

**“Impropriety”** includes conduct that violates the law, court rules, merit rules or provisions of this Code, and conduct that undermines a judicial employee’s independence, integrity, or impartiality.

**“Independence”** means a judicial employee’s freedom from influence or controls other than those established by law.

**“Integrity”** means probity, fairness, honesty, uprightness, and soundness of character.

**“Judge”** means any person who is authorized to perform judicial functions within the Arizona judiciary, including a justice or judge of a court of record, a justice of the peace, magistrate, court commissioner, special master, hearing officer, referee or pro tempore judge.

**“Judicial employee”** means any person other than a judge who performs duties in the judicial department of this state, as it is defined in Az. Const. Art. 6 § 1 as a full time employee, a part time employee or a volunteer

**“Law”** encompasses court rules as well as ordinances, regulations, statutes, constitutional provisions, and decisional law.

**“Member of a judicial employee’s family residing in the employee’s household”** means any relative of a judicial employee by blood or marriage, or a person treated by the judicial employee as a member of the family, who resides in the household.

**“Nonpublic information”** means information that is not available to the public. Nonpublic information may include, but is not limited to, information that is sealed by statute or court



order or impounded or communicated in camera, and information offered in dependency cases or psychiatric reports and any information contained in records that are closed or confidential under Arizona Supreme Court Rule 123 or other law.

**“Pending”** is a matter that has commenced. A matter continues to be pending through any appellate process until final disposition.

**"Personal staff"** means assistants, secretaries, law clerks, bailiffs, and court reporters appointed by, assigned regularly to, or reporting directly to a judge.

**Comment**

If an employee has part time duties within the court or government in addition to serving on a judge's personal staff, as a courtroom clerk, or as a court manager, the employee is still subject to the limitations of this code. The relationship with the judge exists whether or not the duties are performed full time.

**“Political organization”** means a political party or other group sponsored by or affiliated with a political party or candidate, the principal purpose of which is to further the election or appointment of candidates for political office. For purposes of this code, the term does not include a judicial candidate's campaign committee created as authorized by Rule 4.3 of the Code of Judicial Conduct.

**"Relative"** means a spouse, child, grandchild, great-grandchild, parent, grandparent, sibling, aunt, uncle, niece, nephew, or other person with whom the judicial employee maintains a close familial relationship, including any person residing in the employee's household.

**“Volunteer”** is a person appointed or assigned by an authorized court official or other appointing authority to perform specified duties on behalf of the court.

**D. Conduct Rules and Comments.**

**CANON 1**

**A JUDICIAL EMPLOYEE SHALL UPHOLD AND PROMOTE THE INDEPENDENCE, INTEGRITY, AND IMPARTIALITY OF THE JUDICIARY AND SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY.**

**RULE 1.1**

**Compliance with the Law**

(A) A judicial employee shall comply with the law.

(B) A judicial employee shall not use public funds, property or resources wastefully or for any private purpose not authorized by judicial or administrative authorities.

(C) A judicial employee shall not do business on behalf of the court with a person known to be a former judicial employee who left the court's employment during the preceding twelve months and who represents a person or business entity concerning any matter in which the former employee was directly and personally involved and over which the former employee exercised substantial and material administrative discretion.

**Comment**

1. As public servants, judicial employees should not act in any way that would violate specific laws or the provisions of this code. Public confidence in the judiciary is maintained by the willingness of each employee to live up to this standard. When faced with conflicting loyalties, judicial employees should seek first to maintain public trust. Employees should not, for example, knowingly make false entries on time cards or personnel records; backdate a court document, falsely claim reimbursement for mileage or expenses; misuse the telephone, facsimile machine, or copying machine; or take supplies home for private use. This conduct may be theft, a class 1 misdemeanor ranging to a class 3 felony under A.R.S. § 13-1802 or fraud, a class 2 felony under A.R.S. § 13-2310.

2. A judicial employee who knows a person who seeks to do business with the court is a former employee must determine whether the former employee is disqualified under paragraph (C). Abuse of former employment by a former employee may be a class 6 felony under A.R.S. § 38-504(A).

**RULE 1.2**

**Promoting Confidence in the Judiciary**

A judicial employee shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.

**Comment**

1. The fundamental attitudes and work habits of individual judicial employees reflect on the integrity and independence of the judiciary and are of vital importance in maintaining the confidence of the public in the judiciary. Honesty and truthfulness are paramount.

2. Public confidence in the judiciary is eroded by improper conduct and conduct that creates the appearance of impropriety. This principle applies to both professional conduct and personal conduct that affects the public perception of the court.

3. A judicial employee should expect to be the subject of public scrutiny that might be viewed as burdensome if applied to other citizens, and must accept the restrictions imposed by the code.

4. Conduct that compromises or appears to compromise the independence, integrity, and impartiality of the judiciary or of a judicial employee undermines public confidence in the judiciary. Because it is not practicable to list all such conduct, this rule is necessarily cast in general terms.

5. Actual improprieties include violations of law, court rules or provisions of this code. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judicial employee violated this code or engaged in other conduct that reflects adversely on the judicial employee's honesty, impartiality, temperament, or fitness. A judicial employee's personal and family circumstances are generally not appropriate considerations on which to presume an appearance of impropriety.

***RULE 1.3***

**Abuse of Position**

Judicial employees shall not use or attempt to use their positions for personal gain or to secure special privileges or exemptions for themselves or any other person.

**Comment**

1. It is improper for a judicial employee to use or attempt to use his or her position to gain personal advantage or deferential treatment of any kind. For example, it would be improper for a judicial employee to seek or provide special consideration regarding traffic citations or parking violations or to provide special treatment to particular parties or matters for personal reasons. Similarly, a judicial employee must not use court letterhead to gain an advantage in conducting his or her personal business.

2. A judicial employee may provide a reference or recommendation for an individual based upon personal knowledge. The judicial employee may use court letterhead if there is no likelihood that the use of the letterhead would reasonably be perceived as an attempt to exert pressure by reason of the court employment.

3. Accepting, agreeing to accept, giving or requesting a gift or favor with an understanding that any court business or proceeding would be influenced may be bribery, a class 4 felony under A.R.S. §§ 13-2602(A)(2) and 13-2606.

4. It is improper to use or disclose to others confidential information or records for personal purposes. Abuse of confidential information by a current or former employee may be a class 6 felony under A.R.S. § 38-504(B).

## **CANON 2**

### **A JUDICIAL EMPLOYEE SHALL PERFORM THE DUTIES OF JUDICIAL EMPLOYMENT IMPARTIALLY, COMPETENTLY, AND DILIGENTLY.**

#### **RULE 2.1**

##### **Giving Priority to Ethical Duties**

A court employee shall regard the ethical duties provided in this code of conduct as having the highest priority.

##### **Comment**

To ensure that judicial employees are able to fulfill their court duties, judicial employees must conduct their personal and professional activities to minimize the risk of conflict with the performance of court duties.

#### **RULE 2.2**

##### **Impartiality and Fairness**

A judicial employee shall perform court duties fairly and impartially.

##### **Comment**

Judicial employees may appear to be providing preferential treatment to litigants, counsel or other persons with whom they discuss the merits of a case pending before the court or behave in a particularly friendly manner. To gauge the propriety of any behavior, employees should consider how opposing parties and counsel who are involved in the proceeding are likely to view the situation.

#### **RULE 2.3**

##### **Bias, Prejudice, and Harassment**

A judicial employee shall perform court duties without bias or prejudice and shall not manifest bias or prejudice by words or conduct, or engage in harassment in the performance of court duties. This includes but is not limited to bias, prejudice, or harassment based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation.

##### **Comment**

1. A judicial employee who manifests bias or prejudice in the conduct of court business impairs the fairness of the judicial process and brings the judiciary into disrepute.
2. Examples of manifestations of bias or prejudice include but are not limited to epithets; slurs; demeaning nicknames; negative stereotyping; attempted humor based upon

stereotypes; threatening, intimidating, or hostile acts; suggestions of connections between race, ethnicity, or nationality and crime; and irrelevant references to personal characteristics. Facial expressions and body language and other forms of nonverbal communication may convey to parties and lawyers in the proceeding, jurors, the media, and others an appearance of bias or prejudice. A judicial employee must avoid conduct that may reasonably be perceived as prejudiced or biased.

3. Harassment is verbal or physical conduct that denigrates or shows hostility or aversion toward a person on bases such as race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socio-economic status, or political affiliation.

4. Sexual harassment includes but is not limited to sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that is unwelcome. See Arizona Supreme Court, Administrative Order 92-33 (Oct. 19, 1992), for the judiciary's sexual harassment policy.

#### **RULE 2.4**

##### **External Influences on Court Duties**

(A) A judicial employee shall not be influenced in the performance of court duties by partisan interests, public clamor or fear of criticism or reprisal.

(B) A judicial employee shall not permit family, social, political, financial, or other interests or relationships to influence the performance of court duties.

(C) A judicial employee shall not convey the impression that any person or organization is in a position to influence the outcome of a case.

##### **Comment**

1. An independent judiciary requires that judges decide cases according to the law and facts, without regard to whether particular laws or litigants are popular or unpopular with the public, the media, government officials, or the judge's or judicial employee's friends or family. Confidence in the judiciary is eroded if judicial process or decision making is perceived to be subject to inappropriate outside influences.

2. Employees who think they may be influenced in a particular matter should discuss the situation with a supervisor, administrator, or judge.

#### **RULE 2.5**

##### **Competence, Diligence, and Cooperation**

(A) A judicial employee shall perform court duties competently, diligently, and promptly.

(B) A judicial employee shall reasonably cooperate with other judicial employees, judges and court officials in the conduct of court business.

(C) A judicial employee shall comply with judicial education requirements and maintain any licensing or certification required for the judicial employee's position.

(D) A judicial employee, when authorized, shall furnish accurate, timely information and shall provide access to public court proceedings and records according to established procedures.

**Comment**

1. Competence in the performance of court duties requires the knowledge, skill, thoroughness, and preparation reasonably necessary to perform the duties of the judicial employee's position.

2. Court managers should seek the necessary court staff, expertise, training, and resources to enable court employees to perform their responsibilities.

3. Prompt disposition of the court's business requires judicial employees to be punctual in attending to their duties and cooperative with co-workers, judges, and litigants and their lawyers. Article 2, § 11 of the Arizona Constitution requires that "Justice in all cases shall be administered openly, and without unnecessary delay." Rule 123(f)(2) of the Rules of the Supreme Court require the custodian to "promptly respond orally or in writing concerning the availability of the records, and provide the records in a reasonable time..."

**RULE 2.6**

**Assistance to Litigants**

A judicial employee shall assist litigants to access the courts by providing prompt and courteous customer service and accurate information consistent with the employee's responsibilities and knowledge and the court's resources and procedures while remaining neutral and impartial and avoiding the unauthorized practice of law. Employees are authorized to provide the following assistance:

(A) Explain how to accomplish various actions within the court system and provide information about court procedures, without recommending a particular course of action;

(B) Answer questions about court policies and procedures, without disclosing confidential or restricted information as provided in Rule 3.2;

(C) Explain legal terms, without providing legal interpretations by applying legal terms and concepts to specific facts;

(D) Provide forms and answer procedural questions about how to complete court papers and forms with factual information by the court customer, without recommending what words to put on the forms;



(E) Provide public case information, without providing confidential case information as provided in Rule 2.5;

(F) Provide information on various procedural options, without giving an opinion about what remedies to seek or which option is best;

(G) Cite statutes, court rules or ordinances a judicial employee knows in order to perform the employee's job, without performing legal research for court customers;

(H) When asked to recommend a legal professional such as an attorney, a legal document preparer, or process server, refer the customer to a resource like a directory or referral service, without recommending a specific legal professional; and

(I) Provide scheduling and other information about a case, without prejudicing another party in the case or providing information to or from a judge that is impermissible ex parte (one party) communication about a case.

**Comment**

For fuller explanation see the Guide to Court Customer Assistance: Legal Advice - Legal Information Guidelines for Arizona Court Personnel, Administrative Office of the Courts, Court Services Division, 2007, upon which this rule is based.

**RULE 2.7**

**Reserved**

**RULE 2.8**

**Professionalism**

Judicial employees shall be patient, respectful, and courteous with litigants, jurors, witnesses, lawyers, co-workers, and others who work in the court or contact the court.

**Comment**

The duty to interact and behave with patience and courtesy is not inconsistent with the duty imposed in Rule 2.5 to handle matters diligently and promptly. Judicial employees can be efficient and businesslike while being patient and courteous.

**RULE 2.9**

**Communication with Judges.**

(A) A judicial employee shall not communicate personal knowledge about the facts of a pending case to the judge assigned to the case.

(B) Based upon general direction by a judge, a judicial employee may communicate information from a party to the judge for scheduling, administrative, or emergency purposes, which does not address substantive matters.

**Comment**

To the extent reasonably possible, all parties or their lawyers shall be included in communications with a judge. A judge may also direct judicial staff, without invoking the notice and disclosure provisions of Rule 2.9 of the Code of Judicial Conduct, to screen written ex parte communications and to take appropriate action consistent with Rule 2.9 of the Code of Judicial Conduct.

**RULE 2.10**

**Statements on Pending and Impending Cases**

(A) A judicial employee shall not make any public statement that might reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court, or make any nonpublic statement that might substantially interfere with a fair trial or hearing.

(B) Notwithstanding the restrictions in paragraph (A), a judicial employee may make public statements in the course of official duties, may explain court procedures, and may comment on any proceeding in which the judicial employee is a litigant in a personal capacity.

**Comment**

1. This rule's restrictions on speech are essential to the maintenance of the independence, integrity, and impartiality of the judiciary.

2. This rule does not prohibit a judicial employee from commenting on proceedings in which the judicial employee is a litigant in a personal capacity. In cases in which the judicial employee is a litigant in an official capacity, the judicial employee may comment publicly on the merits of the case. However, the judicial employee should consider whether any comment is advisable and consistent with that employee's responsibilities.

**RULE 2.11**

**Personal Interests.**

(A) A judicial employee shall manage personal and business matters so as to avoid situations that may lead to conflict, or the appearance of conflict, in the performance of the judicial employee's employment.

(B) A judicial employee shall inform the appropriate supervisor of any potential conflict between the judicial employee's performance of court duties and an economic interest of the employee individually or as a fiduciary or of the employee's spouse, domestic partner, parent, or child, or any other member of the employee's family residing in the employee's household.

(C) A member of a judge's personal staff and a courtroom clerk shall inform the judge of any potential conflict of interest, involvement, or activity of the staff member or courtroom clerk in a case pending before the judge. This includes a case in which the judicial employee, the judicial employee's spouse or domestic partner, a great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew or niece of the judicial employee or the judicial employee's spouse or domestic partner, or the spouse or domestic partner of any of these relatives is:

- (1) a party to the proceeding, or an officer, director, general partner, managing member, or trustee of a party;
- (2) acting as a lawyer in the proceeding;
- (3) a person who has more than a de minimis (insignificant) interest that could be substantially affected by the proceeding; or
- (4) likely to be a material witness in the proceeding.

(D) A judicial employee shall withdraw from participation in a court proceeding or court business in which the employee or the employee's spouse, domestic partner, parent, or child, or any other member of the employee's family residing in the employee's household has a substantial personal, economic, or family interest that may actually or appear to influence the outcome of the court proceeding or business.

(E) A judicial employee shall withdraw from any proceeding in which the employee's impartiality might reasonably be questioned due to a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of facts that are in dispute in the proceeding.

(F) A judicial employee required to withdraw from participation in a judicial proceeding under this rule, other than for bias or prejudice under paragraph (E), may continue to perform duties related to the proceeding if, following disclosure to the parties and their lawyers, the parties and lawyers agree, without participation by the judge or court personnel in this decision, that the court employee need not withdraw. The agreement shall be incorporated into the record of the proceeding.

### **Comment**

1. Every judicial employee has a legal obligation under A.R.S. § 38-501 et. seq. to diligently identify, disclose and avoid conflicts of interest. A potential personal interest or conflict of interest exists when an official action or decision in which a judicial employee participates may specially benefit or harm a personal, business or employment interest of the judicial employee, the judicial employee's relative or the judicial employee's close friends. In a judicial proceeding, a potential conflict of interest arises if a judicial employee's business associate, relative or close friend is an interested party. Even if no impropriety actually occurs, a conflict of interest creates an appearance of impropriety that can seriously undermine the public's confidence and trust in the court system.

2. If withdrawal from a matter would cause unnecessary hardship, the judge or court manager may authorize the judicial employee to participate in the matter if permitted by the Code of Judicial Conduct, no reasonable alternative exists, and safeguards, including full disclosure to the parties involved, ensure official duties are properly performed.

3. "Economic interest," is defined in the Terminology section.

**RULE 2.12**

**Reserved**

**RULE 2.13**

**Employment of Relatives**

Judicial employees shall not be appointed by, or assigned to be directly supervised by, a relative or by a supervisor reporting to a relative. Employees shall not attempt to influence the employment or advancement of a relative by a court except by letters of reference or in response to a person verifying references.

**Comment**

Employment of a relative by a court manager may be a class 2 misdemeanor under A.R.S. § 38-481.

**RULE 2.14**

**Disability and Impairment**

A judicial employee who has a reasonable belief that the performance of another judicial employee or a judge is impaired by drugs or alcohol, or by a mental, emotional, or physical condition, shall immediately report the observed behavior to a supervisor, administrator, the appropriate Human Resources Office, or the Commission on Judicial Conduct. A judicial employee who receives a report of impairment shall take appropriate action, which may include a confidential referral when the judge or judicial employee agrees to seek assistance from an appropriate assistance program.

**Comment**

1. "Appropriate action" means action intended and reasonably likely to help the impaired person address the problem and prevent harm to the justice system. Depending upon the circumstances, appropriate action may include but is not limited to speaking directly to the impaired person, notifying an individual with supervisory responsibility over the impaired person, or making a referral to an assistance program.

2. Taking or initiating corrective action by way of referral of a cooperative judge or judicial employee to an assistance program may satisfy the responsibility of judicial employee who receives a report under this rule. Assistance programs have many approaches

for offering help to impaired judicial employees and judges, such as intervention, counseling, or referral to appropriate health care professionals. Depending upon the gravity of the conduct that has been reported, however, the judicial employee who receives a report may be required to take other action, such as reporting the impaired person to the appropriate supervisory or disciplinary authority or the Commission on Judicial Conduct. See Rule 2.15.

## **RULE 2.15**

### **Duty to Report**

A judicial employee shall report to a supervisor, administrator or judge within the judicial department any violation of the law in the course of court employment or that may affect the violator's ability to perform court duties and any violation of the applicable code of conduct by a judge, another judicial employee, or the reporting employee. Employees shall not be subject to retaliation for reporting violations if such report is made in good faith and shall cooperate and be candid and honest in any investigation and disciplinary proceeding.

#### **Comment**

1. This obligation does not prohibit reporting illegal conduct to a law enforcement agency or other appropriate authority.

2. Employees should cooperate with the Commission on Judicial Conduct and may communicate with the Commission at any time, without fear of reprisal, for the purpose of discussing potential or actual judicial misconduct. Cooperation with investigations and discipline proceedings instills confidence in judicial employees' commitment to the integrity of the judicial system and the protection of the public.

**CANON 3**

**A JUDICIAL EMPLOYEE SHALL CONDUCT ACTIVITIES OUTSIDE OF JUDICIAL  
EMPLOYMENT TO MINIMIZE THE RISK OF CONFLICT  
WITH THE OBLIGATIONS OF JUDICIAL EMPLOYMENT.**

**RULE 3.1**

**Outside Activities in General.**

(A) A judicial employee shall conduct outside activities so as to avoid a negative effect on the court or the ability to perform court duties.

(B) Except as provided by law or court rule, judicial employees shall not engage in any business, secondary employment or volunteer activity that:

- (1) Involves an organization or a private employer whose officers, employees or agents are regularly involved as a litigant, an attorney, or a witness in cases filed with the court in which the judicial employee is employed;
- (2) Is conducted during the judicial employee's scheduled working hours;
- (3) Places the judicial employee in a position of conflict with the judicial employee's official role in the judicial department;
- (4) Requires the judicial employee to appear regularly in judicial or administrative agency proceedings;
- (5) Identifies the judicial employee with the judicial department or gives an impression the employment or activity is on behalf of the judicial department; or
- (6) Requires use of court equipment, materials, supplies, telephone services, office space, computer time, or facilities.

(C) Paragraph B does not apply to court reporters appointed pursuant to A.R.S. § 12-221 when preparing transcripts pursuant to A.R.S. §§ 12-223 and 12-224. A person may serve as a volunteer and also engage in an activity described in subsection B (1) or (4). A part time employee may engage in such an activity approved by the respective clerk of superior court, presiding judge, chief judge, or chief justice of a court consistent with other provisions of this code and the Code of Judicial Conduct.

**Comment**

1. In order to avoid any employment or volunteer activity that is in conflict with a judicial employee's official role within the judiciary, a judicial employee should not, for example, work for a police department, public defender, or prosecutor.

2. A judicial employee may become a foster parent and may teach, lecture, or write on any subject, so long as any payment is at the prevailing rate, any presentation or document clarifies that the judicial employee is not representing the judicial department, and confidential documents and information are not disclosed.

## **RULE 3.2**

### **Use of Nonpublic Information**

A judicial employee shall not intentionally disclose or use nonpublic information acquired in an official capacity for any purpose unrelated to the employee's duties.

#### **Comment**

1. In the course of performing court duties a judicial employee may acquire information of commercial or other value that is unavailable to the public. The judicial employee must not reveal or use such information for personal gain or advantage or for any purpose unrelated to court duties.

2. This rule is not intended to affect a judicial employee's ability to act on information as necessary to protect the health or safety of any individual if consistent with other provisions of this code.

3. Some information received by judicial employees while performing their duties is confidential and should not be revealed. Sometimes confidential matters are revealed through innocent and casual remarks about pending or closed cases, about participants in litigation, or about juries, any of which could give attorneys, litigants and reporters an unfair advantage. Such remarks can seriously prejudice a case or harm a person's standing in the community.

## **RULE 3.3**

### **Solicitation for Outside Activities**

(A) A judicial employee shall not use the employee's position or office to solicit funds, but a judicial employee, other than a member of a judge's personal staff, a courtroom clerk, or a court manager, may solicit funds in connection with outside activities.

(B) A member of a judge's personal staff, a courtroom clerk, or a court manager is subject to the same limitations on solicitation as judges stated in Rule 3.7, Code of Judicial Conduct.

#### **Comment**

A judicial employee should not personally request or by action or inference solicit a subordinate to contribute funds to any organization or activity but may provide information to subordinates about a general fund-raising campaign. A member of a judge's personal staff, a courtroom clerk, or a court manager should not request or by action or inference solicit any



litigant, attorney or judicial employee to contribute funds under circumstances where their close relationship to the judge could reasonably be viewed to give weight to the request.

#### **RULE 3.4**

##### **Gifts and Extra Compensation**

(A) A judicial employee shall not solicit gifts or favors nor accept gifts or favors, other than those listed in paragraph B, from attorneys, litigants, or other persons known to do business with the court and shall not request or accept any payment in addition to the judicial employee's regular compensation for assistance given as part of official duties. This rule does not apply to a volunteer soliciting or accepting a gift from a person with whom the volunteer has not been involved in the performance of court duties.

(B) A judicial employee may accept the following:

- (1) items with little intrinsic value, such as plaques, certificates, trophies, and greeting cards;
- (2) gifts, loans, bequests, benefits, or other things of value from friends, relatives, or other persons, including lawyers, whose appearance or interest in a proceeding pending or impending would in any event require withdrawal from participation by the judicial employee under Rule 2.11;
- (3) ordinary social hospitality;
- (4) commercial or financial opportunities and benefits, including special pricing and discounts, and loans from lending institutions in their regular course of business, if the same opportunities and benefits or loans are made available on the same terms to similarly situated persons who are not judicial employees;
- (5) rewards and prizes given to competitors or participants in random drawings, contests, or other events that are open to persons who are not judicial employees;
- (6) scholarships, fellowships, and similar benefits or awards granted on the same terms and based on the same criteria applied to other applicants;
- (7) books, magazines, journals, audiovisual materials, and other resource materials supplied by publishers on a complimentary basis for official use;
- (8) gifts, awards, or benefits associated with the business, profession, or other separate activity of a spouse, a domestic partner, or other family member of a judicial employee residing in the judicial employee's household, but that incidentally benefit the judicial employee;
- (9) gifts incident to a public testimonial or other event honoring the recipient; or

- (10) invitations to the judicial employee and the judicial employee's spouse, domestic partner, or guest to attend without charge:
  - (a) an event associated with a bar-related function or other activity relating to the law, the legal system, or the administration of justice; or
  - (b) an event associated with a judicial employee's educational, religious, charitable, fraternal or civic activities, if the same invitation is offered to persons who are not judicial employees and who are engaged in similar ways in the activity as is the judicial employee.

**Comment**

1. Whenever a judicial employee accepts a gift or other thing of value without paying fair market value, there is a risk that the benefit might be viewed as intended to influence the judge's decision or a judicial employee's action in a case. This rule prohibits the acceptance of such benefits except in circumstances where the risk of improper influence is low. Examples of improper conduct include seeking a favor or receiving a gift, or the promise of one, whether it be money, services, travel, food, entertainment, or hospitality, that could be viewed as a reward for past or future services. Receiving fees or compensation not provided by law in return for public services may be a class 6 felony or a class 1 misdemeanor under A.R.S. § 38-504 subject to the penalties in A.R.S. § 38-510.

2. Gift-giving between friends and relatives is a common occurrence, and ordinarily does not create an appearance of impropriety or cause reasonable persons to believe that a judicial employee's or judge's independence, integrity, or impartiality has been compromised. In addition, when the appearance of friends or relatives in a case would require the judicial employee's withdrawal under Rule 2.11, there would be no opportunity for a gift to influence the performance of court duties.

3. The receipt of ordinary social hospitality, commensurate with the occasion, is not likely to undermine the integrity of the judiciary. If an event is a traditional occasion for social hospitality such as a holiday party or the opening of an office and is not inappropriately lavish or expensive, it may qualify as "ordinary social hospitality." However, the receipt of other gifts and things of value from an attorney or party who has or is likely to do business with the court will be appropriate only in the rarest of circumstances.

4. Businesses and financial institutions frequently make available special pricing, discounts, and other benefits, either in connection with a temporary promotion or for preferred customers, based upon longevity of the relationship, volume of business transacted, and other factors. A judicial employee may freely accept such benefits if they are available to the general public, or if the judicial employee qualifies for the special price or discount according to the same criteria as are applied to persons who are not judicial employees. As an example, loans provided at generally prevailing interest rates are not gifts, but a judicial employee could not accept a loan from a financial institution at below-market interest rates unless the same rate was being made available to the general public for a certain period of

time or only to borrowers with specified qualifications that the judicial employee also possesses.

5. If a gift or other benefit is given to the judicial employee's spouse, domestic partner, or member of the judicial employee's family residing in the judicial employee's household, it may be viewed as an attempt to influence the judicial employee indirectly.

### **RULE 3.5**

#### **Reimbursement of Expenses and Waivers of Fees or Charges**

(A) Unless otherwise prohibited by Rules 3.1 or other law, a judicial employee may accept reimbursement of necessary and reasonable expenses for travel, food, lodging, or other incidental expenses, or a waiver or partial waiver of fees or charges for registration, tuition, and similar items, from sources other than the judicial employee's employing entity, if the expenses or charges are associated with the judicial employee's participation in outside activities permitted by this code.

(B) Reimbursement of expenses for necessary travel, food, lodging, or other incidental expenses shall be limited to the actual costs reasonably incurred by the judicial employee and, when appropriate to the occasion, by the judicial employee's spouse, domestic partner, or guest.

(C) This rule does not apply to reimbursement of a part time employee or a volunteer for expenses not incurred in the performance of court duties.

#### **Comment**

Educational, civic, religious, fraternal, and charitable organizations often sponsor meetings, seminars, symposia, dinners, awards ceremonies, and similar events. Judicial employees are encouraged to attend educational programs, as both teachers and participants in furtherance of their duty to remain competent. Participation in a variety of other extrajudicial activity is also permitted and encouraged by this code.

**CANON 4**

**A JUDICIAL EMPLOYEE OR CANDIDATE FOR JUDICIAL DEPARTMENT OFFICE  
SHALL NOT ENGAGE IN POLITICAL OR CAMPAIGN ACTIVITY THAT IS  
INCONSISTENT WITH THE INDEPENDENCE, INTEGRITY, OR IMPARTIALITY OF  
THE JUDICIARY.**

**RULE 4.1**

**General Activities**

In general, a judicial employee may participate in any political activities that do not give the impression the judiciary itself endorses political candidates or supports political causes, except when assigned to do so regarding measures to improve the law, the legal system, or the administration of justice.

**Comment**

1. The judiciary seeks to maintain neutrality in political matters. While judicial employees may express and act on personal opinions about political candidates and issues as other citizens, they should maintain neutrality in action and appearance when performing their duties on behalf of the judicial department, unless their positions permit political advocacy on the part of the judiciary. To this end, judicial employees should separate their political activities from employment duties.

2. As long as a judicial employee does not give the impression the judiciary itself endorses a political candidate or supports a political cause, the employee may circulate candidate nomination petitions or recall petitions; engage in activities to advocate the election or defeat of any candidate; solicit or encourage contributions to be made directly to candidates or campaign committees which are contributing to candidates or advocating the election or defeat of candidates.

3. An employee can best avoid the impression political activity is on behalf of the judiciary by not identifying himself or herself as a court employee while engaging in political activities or, if asked, explaining that he or she is simply participating as a concerned citizen. These political activities must be conducted outside of normal working hours and away from the work place to avoid any association with the court.

**RULE 4.2**

**Personal Staff, Courtroom Clerks, and Managers.**

In addition to the other sections of this canon, members of a judge's personal staff, courtroom clerks, and court managers shall be subject to the same political limitations as judges contained in Canon 4 of the Code of Judicial Conduct, except as provided in Rule 4.3 of this code, and may not hold any elective office.

**RULE 4.3****Elective Judicial Department Office**

Any judicial employee may be a candidate for an elective judicial department office without resigning or taking a leave of absence as required by other rules unless the office is within the same court in which the judicial employee is employed and the incumbent of that office is seeking reelection. If elected, the judicial employee shall resign from court employment prior to assuming office. An incumbent clerk of superior court may be a candidate for the office held without resigning or taking a leave of absence. Notwithstanding paragraph B of this code section, this rule shall supersede any conflicting provision of local law but shall be subject to state law.

**RULE 4.4****Elective Office In General**

A judicial employee who is not limited under Rule 4.2 as a member of a judge's personal staff, a courtroom clerk, or a court manager and who is not seeking judicial department office as permitted in Rule 4.3 may be a candidate for elective office under the following conditions:

(A) Partisan. Such a judicial employee may be a candidate for partisan elective office if the judicial employee is authorized to take an unpaid leave of absence. A leave of absence must be approved by the judicial employee's appointing authority, i.e. presiding judge, chief judge, chief justice or elected clerk of court. The leave of absence must begin before the judicial employee makes a public announcement of candidacy, declares or files as a candidate with the election authority, authorizes or engages in solicitation or acceptance of contributions or support, or is nominated for election to office. The judicial employee shall publicly disclose that he or she is on a leave of absence from court employment. If elected, the judicial employee shall resign from court employment prior to assuming office.

(B) Non-partisan. Such a judicial employee may be a candidate for nonpartisan elective office without taking a leave of absence or separating from court employment if:

- (1) The judicial employee first seeks permission from the chief justice, chief judge, presiding judge of the court or clerk of superior court;
- (2) That judicial officer or clerk of superior court determines the office sought is consistent with judicial employment; and
- (3) The judicial employee otherwise complies with this code.

(C) A person may continue to serve as a volunteer while campaigning for an elective office if continued service is approved by the respective clerk of superior court or the presiding judge, chief judge, or chief justice of a court consistent with other provisions of this code and the Code of Judicial Conduct.

**RULE 4.5**

**Workplace Activity**

During scheduled work hours or at the workplace, judicial employees shall not engage in political campaign activities and shall not display literature, badges, stickers, signs, or other political advertisements on behalf of any party, political committee, agency, candidate for political office or ballot measure. Judicial employees authorized to do so may participate in approved activities regarding measures to improve the law, the legal system, or the administration of justice.

**Comment**

A personal vehicle parked in a space or a parking lot reserved and identified for court employees is covered by these work place limitations. Where such reserved parking exists, displaying political materials on vehicles brings political advocacy to the workplace because the parking lot is part of the workplace.

**RULE 4.6**

**Political Pressure**

Judicial employees shall not use their official authority or position, directly or indirectly, to influence or attempt to influence any other judicial employee to become a member of any political organization or to take part in any political activity.

**RULE 4.7**

**Judicial Campaign Activity**

Judicial employees, including members of a judge's personal staff, courtroom clerks and court managers, may voluntarily participate in a judge's or clerk's campaign activities and may voluntarily contribute funds to a campaign, but only through a judge's or clerk's fund-raising committee. However, judges, elected clerks of the court, and court managers or supervisors shall not require subordinate judicial employees to participate in political activities or personally receive funds from judicial employees for any political purpose.

**RULE 4.8**

**Political Discrimination**

Judicial employees shall not discriminate in favor of or against any subordinate or any applicant for judicial employment on account of permitted political activities.

Black's Law Dictionary (11th ed. 2019), unethical

## UNETHICAL

Bryan A. Garner, Editor in Chief

[Preface](#) | [Guide](#) | [Legal Maxims](#) | [Bibliography](#)

**unethical** *adj.* (1871) Not in conformity with moral norms or standards of professional conduct. See legal ethics.

Westlaw. © 2019 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.